

## 7.6 Custom Conservation Rebates

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### *Applicability*

This best management practice (BMP) is intended for all utilities that serve significant industrial, commercial, and institutional (“ICI”) customers. It is also appropriate for multi-family and homeowner association accounts.

A custom conservation rebate program should be considered to provide a way for staff and non-residential users to develop creative and large-scale savings deals that will not fit under any standard menu of programs. Such a rebate program can be instituted by all utilities that serve ICI customers and is especially effective for utilities that serve a diverse ICI customer class. By working with businesses to find innovative solutions to reduce water use, a custom conservation rebate program is able to create significant reductions in water use from a customer class that typically uses a large amount of water.

To have this program be successful, the utility must emphasize two things:

1. The utility needs to provide market competitive incentives by rebating water saved at the actual cost of water to the utility.
2. The utility needs to interact with participants as partners, not clients, where the participant’s needs and concerns are as important as the water saving goals of the utility.

This BMP is best implemented in connection with analyses completed in the Customer Characterization BMP. Analysis on types of non-residential accounts and their water use patterns will be key to successfully launching a custom conservation rebate program.

### *Description*

The traditional way of running commercial conservation programs is to create a “menu” of rebate options that a business can choose from. These menus are unique to each industry and customer category because water-saving technology is not universal among all industries. The water-saving technology available to a restaurant may not be the same as is available to a school. While this method can be effective if a utility is intending to provide many rebates within the same industry, it requires a whole new program be developed for each industry or category of ICI customer the utility serves.

A custom conservation rebate program reduces staff time because it includes the expertise of the customer as another path to identifying the water-saving technology that is most appropriate for their business. Because the program gives rebates based on water savings, not equipment types or costs, it is easily adaptable to any proposed retrofit project ranging from dental vacuum conversions and landscape irrigation reduction to large process water reclamation systems that might cost millions of dollars. This program is appropriate when a “one size fits all” program does not work.

Businesses won't participate in rebates to install water saving technology if they feel it puts them at an operational or economic disadvantage or if rebate amounts are not significant enough to be an effective incentive. By working with businesses to find innovative solutions to their unique water challenges, a custom conservation rebate program can create significant reductions in water use without decreasing the company's competitive edge. One way the program does this is by not setting specific requirements for technology that must be installed. The terms of the agreement/contract and the water-saving technology installed is decided through a collaborative process between the business owner and the utility. The program aims to make the best deal for both the business and utility by emphasizing the areas where interests overlap. In this process, the business owner's concerns and views are as important in determining the final contract as the water saving goals of the utility. By working collaboratively, utility customers benefit because they offset the costs of installing new technology that will improve their productivity. The utility benefits because water is being cost-effectively saved from a customer class that consumes a large amount of water.

A key tenant of a successful custom conservation rebate is to structure the program to provide financial incentives based on actual water saved – not based on the cost of installation of new technology. This distinction is important when calculating rebate amounts. The formula for the actual payment for water saved will depend upon the strategic needs to the utility offering the program. Some commercial rebate programs base their payments on gallons of peak water savings, others on total acre-feet over a defined time period.

The formula selected should reflect strategic priorities of the utility, the cost of water supply alternatives, or avoided production costs. One option is to average the cost of new supplies and set that as the amount to pay for savings over the determined life of the project. Another option is to determine the contribution of peak reduction and apply a formula based on avoided peak costs.

### *Implementation*

1. Before beginning the program, consider contacting utilities that currently have a custom rebate program. These utilities will likely have suggestions that will improve the success of your program.
2. Stakeholder involvement in the program development will be important to its success. Examples of good program partners include chamber organizations, manufacturing associations, industry trade groups, and even sales representatives for water-efficient equipment. These parties are in a position to provide meaningful feedback on the effectiveness of incentives and will help to market the program.
3. This program can be offered to all non-single-family customers, including industrial, institutional, commercial, multi-family, and large property irrigation. Initially, it may be

necessary to market the program through targeted mailouts or newsletters, though an effective program can rely on word-of-mouth marketing once established. Direct contact with customers in high water use categories may also be needed to drive initial participation in the program. For example, a review of water use by customers may reveal opportunities for savings through car wash retrofits. If this is the case, then direct communication with car wash owners to discuss benefits of participation could be effective.

4. A written protocol is suggested for all rebate incentive programs. The program protocol outlines the steps to follow in considering applications, evaluating projects and issuing incentive payments, and it ensures consistency in program implementation. Writing a program protocol is also an important exercise in identifying basic administrative tools needed for tracking progress such as a database, filing system, and mechanism for obtaining water use history at sites under consideration. An example protocol document for a custom rebate is attached to this BMP.
5. Considerations in protocol development:
  - a. Application:

Include basic contact information as well as a plan for the process to be updated, the technology to be implemented, total project cost, and estimated yearly water savings.
  - b. Proactive application requirement:

The application for participation needs to be submitted and reviewed before the technology is installed or work starts. No rebate should be given if work is completed to avoid “free rider” use of incentive funds. This is also critical as a fraud deterrent, as applications may come in for equipment already owned and operated.
  - c. Eligibility requirements:

Consider eligibility rules that may include being a utility water customer, a minimum monthly consumption, being in good payment status with the utility, and being in compliance with regulatory requirements such as water quality standards.

d. Require above minimum standards:

The custom conservation rebate program may be applied to retrofits of existing technology or to upgrades that are above code requirements for new construction. It is important to clarify that no incentive will be paid for meeting a standard of equipment or water use pattern that is required by law. Similarly, no rebates should be given for installing technology that is required by local ordinance, state, or federal law.

e. Determine value of water saved for rebate amounts:

A key step in all conservation incentives is determination of the value of the gallons saved. Each utility will have a different value they place on reducing long-term demands. See the section on setting rebate value for two suggestions on this process.

f. Set maximum incentive:

Consider the limits on the incentive payment. This can be a total maximum payment to one customer, a limit on the percentage of costs, or a limit on how much the incentive reduces the payback for the customer. These limits should be determined and put in the program guidelines before the program begins to avoid controversy and misunderstandings.

g. Decide if untested technology is eligible:

Determine if your program will provide incentives on untested technology or if technology must have savings tested by third party reviewers. For projects that are less certain on savings, consider revising contracts to eliminate payments if field-verified savings cannot be measured and confirmed. For example, if a participant wants to make changes to improve a cooling tower, reference the Industrial BMP for Cooling Towers for background information.

h. Consider custom savings metrics:

Accepting the savings reports or estimates from the customer getting the rebate is not advised. Having a custom metric outlined in the custom rebate contract is suggested. While pre and post measurements may be useful, they may not tell the entire story on water efficiency if production increases. To remove the variable of increased or decreased production, water use should be looked at as a per unit ratio. An example might be getting verifiable data from a car wash operation on

the number of cars washed and using the measurement of gallons per vehicle in the efficiency metrics of the contract. Water use per unit of production for manufacturing might also work. For landscape water projects, consider a maximum usage for each month based on historical consumption, or gallons/minute/schedule metrics, or an evapotranspiration (ET) based water budget. The key for each project is to negotiate the expectations in advance and include them in the contract terms.

i. Consider a performance contract:

A contract between the utility and the customer is critical to clarifying expectations and ensuring that savings are firm. The contract may include provisions such as the ability to refund a portion of the incentive back to the utility if the water saving equipment or processes are discontinued before the expected life of the project. A contract can also provide a safeguard by documenting expected savings before payments are made. In the case of technology requiring human behavior, a multi-year contract that requires performance metrics be assessed before annual payments are issued is recommended. An example custom rebate contract template is included as an attachment to this BMP.

j. Inspections:

Determine inspection requirements in advance and clarify them in the program guidelines for customers. A pre-inspection and sub-metering may be needed to verify the pre-retrofit water use metric. If other data such as units produced are required for a water use-per-unit metric, consider how these data can be obtained in a way that verifies them independently. It may be necessary for some projects to require a sub-meter installation that directly measures water used for the operation being made more efficient. An example might be a sub-meter installed on the line leading to the hotel laundry operation.

k. Equipment lifetime:

The lifetime expectancy of equipment also contributes to the amount of water saved and should be established based on the time it would take for the technology to no longer be water efficient. In general, the lifetime for small equipment like shower heads or irrigation systems should be significantly less than larger industrial equipment like reclamation systems.

### *Scope and Schedule*

The following steps should be followed to implement this BMP.

1. Analyze ICI customer base to determine if a custom rebate program is appropriate. If there is not a large variety in commercial and industrial businesses within the utility's service area, a menu of standard rebate programs may be more effective.
2. Plan, implement, and market a custom rebate program within 12 months of adopting this BMP.
  - Include appropriate regional stakeholders in a discussion of the program that should include the program goals, budget, application process, and evaluation plan.
3. Conduct an annual evaluation of the program. Program effectiveness should not be based on number of rebates given alone. Total acre-feet of water saved annually by the program and the cost per acre-foot for those savings should be calculated. If the strategic objective of the program is avoidance of peak production, the impact of participants on peak production should be reviewed. If the program is determined to be ineffective, analysis should be done to assess how it could be modified to gain better savings or increased participation.

### *Measuring Implementation and Determining Water Savings*

1. Ensure firm savings with sound policies and procedures: The protocol development portion of this BMP includes several key suggestions for ensuring that water savings from the custom rebate program are among the firmest possible. If the rebate contract requires clear, independently verifiable measurements before payments are made then savings will be firm.
2. Predicting annual savings from custom rebate program: There are several strategies that can be deployed to forecast the annual savings from a custom rebate program. Because each project will vary in size and scope of savings, it is not possible to project savings based on the number of projects. Instead, consider these options:
  - a. Set a target of annual confirmed savings from projects:

A program target could be saving 2,000,000 gallons of permanent, annual water through custom rebates. These savings could be accomplished through one project with a very large water user or through five projects with smaller water users. Each project contract will have an associated contractual volume of water saved included.
  - b. Set a budget based on annual savings target with \$/acre-foot requirements:

Another way of expressing annual targets is through budget allocation. A utility may decide that it will incentivize custom rebate projects at a rate of \$1,000/acre-

foot for up to ten years of firm savings. By this metric, if the desire is to save 2,000,000 gallons of permanent, annual water for which savings is calculated by ten years, then the total savings is 20,000,000 gallons. At a rate of paying \$1,000/acre-foot this means that the budget line item would be calculated by converting 20,000,000 to 61.378 acre-feet. At \$1,000/acre-foot the budget allocation would have to be \$61,378 for the year.

### 3. Considerations for setting incentive amounts:

Incentives for participation should reflect the strategic value of the water saved to the utility. For communities where water saved is reducing the need for new supplies, a logical option to consider is providing an incentive comparable to the average cost of new water supply projects. For communities with peak production or treatment challenges, the value of water saved might include the value of avoided cost to deliver the water to the customer. Three examples are provided below:

#### a. Incentive based on new water supply cost:

To give market competitive rebates and to ensure the program is cost-effective, rebate amounts should be calculated based on the actual cost of water to the utility, including treatment and delivery costs. To determine the actual cost of water, calculate the average cost per acre-foot of all water sources available to the utility.

Rebate amounts are calculated with the following formula:

Rebate amount = (acre-feet saved annually) \* (average cost per acre-foot for utility) \* (lifetime of equipment)

#### b. Incentive based on new peak/drought firm supply cost:

The average cost of water may not be the same throughout the year because of changes in delivery costs or pumping allowances. During peak months, water may be more expensive to the utility. To address this, custom rebate projects like irrigation redesign that reduce water consumption during peak demand could be rebated at a higher cost per acre-foot amount. Custom rebate projects that improve water efficiency of processes that would be used consistently year-round would be rebated at the baseline cost per acre-foot amount described above.

Rebate amounts are calculated with the following formula:

Rebate amount = (acre-feet saved annually) \* (average cost per acre-foot for utility) \* (lifetime of equipment)

c. Incentive based on avoided peak production cost:

Efforts that reduce water usage year-round are important to conservation but those that reduce demand during peak season can be more strategically important, especially if the utility faces reductions in pumping allowances during peak season. To address this, the amount rebated per acre-foot should reflect the avoided peak production cost.

Rebate amounts can be calculated by either of the following formulas:

Rebate amount = [(gallons of water saved annually) / (1000 gallons)] \* (cost for reduction in peak production) \* (lifetime of equipment)

OR

Rebate amount = (gallons of water saved annually) \* (\$1.00) \* (365 days)

*Note:* This type of incentive may not be as effective as the previous two because savings may not be high enough to incentivize participation.

### *References for Additional Information*

Industrial and commercial BMP documents: BMPs written for industrial, commercial, and institutional customers are a fantastic resource for recommendations on how ICI processes should be implemented. Review these BMPs while reviewing participants' applications to help determine how effective the change in technology will be at saving water.

- Consider that advances in technology may result in outdated metrics within BMP documents. Before accepting a water-savings estimate or metric for standard usage, review the current market within the industry being considered. For example, if the proposed project is a commercial washing machine, check to determine what equipment competitors are using and request specifications from several vendors of similar equipment.



## APPENDIX A: EXAMPLE CUSTOM REBATE PROGRAM PROTOCOL

### Program Description

With commercial and nonresidential accounts representing \_\_\_\_ percent of our customer base, these customers account for \_\_\_\_ percentage of annual water sales. There is great potential for achievement of water savings within this customer class. Through the Custom Conservation Rebate Program, if water savings are confirmed, businesses may receive a rebate for the installation of water-saving equipment.

The Custom Conservation Rebate Program offers incentives, in the form of rebates, for General Class Customers instituting new water saving processes or installing new water saving equipment. The rebates are determined by the actual water savings, the life of the equipment, and the project's utility savings return on investment (ROI).

The Custom Conservation Rebate Program is easily adaptable to any proposed retrofit project ranging from dental vacuum conversions and landscape irrigation reduction to large process water reclamation systems with costs in the millions of dollars. Because of its adaptability, the Custom Conservation Rebate Program can be used as a tool for corporations conducting cost/benefit analyses on proposed projects.

These incentive rebates are designed to accelerate behavioral, process, and equipment changes that lead to lower water use over time. An ideal incentive rebate provides just enough assistance to entice more water users to engage in changes that they would not otherwise have made. Incentive rebates, combined with education, help overcome the hesitation regarding financial investment for water savings, thus making implementation more feasible from an economic standpoint.

Examples of qualifying projects include but are not limited to:

- Replacement of water-cooled equipment with new air-cooled equipment
- Process water reclamation systems
- Air conditioning condensate capture and reuse
- Elimination of water intensive industrial processes
- Cooling tower modifications
- Landscape irrigation reductions
- Industrial laundry equipment upgrades
- Commercial indoor fixture replacement
- More efficient reverse osmosis units
- Friction type car wash equipment
- Any other reduction of domestic water use

### **Funding Requirements**

- Incentive rebates are calculated and provided at the following rates:
  - \$\_\_\_\_ per acre-foot for year round water savings
  - \$\_\_\_\_ per acre-foot for peak season (summer months) water savings
- Incentive rebate formula:
  - \$\_\_\_\_ per acre-foot \* Annual acre-feet of water savings \* Equipment life
- Rebates and program participation are based on available funding during each fiscal budget year.

### **Custom Conservation Rebate Program Rules**

In order to qualify for a rebate under the Custom Conservation Rebate Program, applicants and proposed projects must meet the following criteria:

- Applicant must be a General Class Water Customer.
  - Sewer only customers are not eligible for participation in the program.
- Applicant must have an "active account".
  - Inactive or finalized accounts do not qualify.
- Applicant must be in good standing (all accounts current with payment, annual reports submitted to appropriate department, etc.)
- Applicant must apply for the rebate and show estimated savings prior to commencing with the project.
  - Retroactive rebates will not be considered.
- The program generally applies to the retrofit of existing equipment or processes.
  - However, retrofits on new equipment will be considered for those projects that are above and beyond the accepted standards for a given industry.
- Rebates for leak repair or regular owner's maintenance are not eligible.
- Rebates are determined based on the installed cost of the project, the projected water savings, and the equipment life up to a maximum of 10 years.
- Rebates will not be offered for systems that are already required by local ordinance or state or federal law.
- Proposed water savings must be shown and proven prior to rebate eligibility.
  - Applicant must provide documented proof of how they calculated the potential water savings.

- Applicant must provide documented proof that they plan to employ a "proven" technology.
  - New or unproven technology that claims to generate water savings must be tested and confirmed by an approved independent third-party testing facility prior to program implementation to ensure eligibility.
  - If there is any question as to the viability of the technology or its ability to achieve the predicted results, an observation period maybe requested. The observation period will provide time to monitor the new water consumption patterns and to determine the post-retrofit effectiveness of the technology in achieving the desired results.
- Accepted projects require the signing of a legally binding contract between \_\_\_\_\_ and the applicant. All contracts include a clause that requires the customer to repay the rebate should it be proven that the equipment was removed, shutdown, or failed to achieve the predicted results.
- Rebates in excess of \$ \_\_\_\_\_ require approval from the \_\_\_\_\_.
- Rebates are issued only after all invoices have been submitted and all equipment is installed and operational.

### **Program Steps**

1. Open and date stamp application.
2. Look up account information.
3. Review customer application.
4. Contact customer to schedule pre-inspection.
5. Review application with customer and gather all data necessary for approval to proceed.
6. Verify account is in good standing by coordinating with assigned personnel in Billing Operations, Backflow Prevention, Resource Compliance, and Conservation.
7. Negotiate rebate amount, conditions of payment, and method of measurement of savings. Ensure that these terms are clearly included in a contract attachment.
8. Work with Legal Department to review contract.
9. Determine if level of rebate requires further review by Finance Department or if amount of rebate is subject to limits of payments requiring board or city council approval.
10. Once application is approved, send letter of approval to customer. If application is not approved, send letter detailing the required information
11. Upon completion, gather all invoices and conduct post-inspection. Set time-frame for additional inspections if this is a long-term performance contract.
12. Send two original copies of contract to customer for signature. Both copies need to be signed.
13. Executed contracts under \$ \_\_\_\_\_ need to be signed by \_\_\_\_\_, and routed through legal and the vice president prior to approval.
14. If rebate is greater than \$ \_\_\_\_\_ prepare \_\_\_\_\_.
15. Upon approval, have contracts signed.
16. Upon signing of contracts, and completion of required inspections deliver rebate check to appropriate authority for the company under contract.

## EXAMPLE COMMERCIAL CUSTOM REBATE AGREEMENT

THIS AGREEMENT is made and entered into effective as of the \_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date") by and between the \_\_\_\_\_, an agency of the City of \_\_\_\_\_, and \_\_\_\_\_ ("Customer"), with an address of \_\_\_\_\_.

### WITNESSETH

WHEREAS, the conservation of potable water benefits the City of \_\_\_\_\_ and its citizens, and its customers; and

WHEREAS, \_\_\_\_\_ is constantly seeking ways to reduce water consumption by providing economic incentives in the form of rebates to those customers that choose to convert to watersaving equipment and practices; and

WHEREAS, the Commercial Custom Rebate Program seeks to reduce water consumption by providing qualified customers with rebates based on water savings that offset some or all of the installed cost of new watersaving equipment; and

WHEREAS, Customer is a commercial user and seeks a rebate under the Commercial Custom Rebate Program for the installed cost of new watersaving equipment; and

WHEREAS, staff has reviewed Customer's Commercial Custom Rebate Application and determined that Customer meets the program eligibility requirements;

NOW THEREFORE, the Parties hereto agree as follows:

### 1.0 The Retrofit Project.

1.01. Retrofit Equipment. The watersaving equipment subject to this Agreement and for which a rebate is authorized, is listed and described in Section 1.0 of Attachment "A" hereto (the "Retrofit Equipment").

1.02. Retrofit Equipment Site. The site(s) at which the Retrofit Equipment is or will be installed is listed and described in Section 2.0 of Attachment "A" (the "Site").

### 2.0 Customer Obligations.

2.01. Purchase, Installation and Maintenance of Retrofit Equipment. At Customer's sole risk, cost and expense, Customer agrees to purchase and install the Retrofit Equipment at the Site prior to the application of any rebates. As of the Effective Date, Customer represents and warrants that it has installed the Retrofit Equipment at the site in compliance with the applicable

manufacturer's installation instructions, guidelines and directions covering the Retrofit Equipment. At customer's sole risk, cost and expense, Customer agrees to keep the Retrofit Equipment in good working condition at the Site(s) for the Term of this Agreement.

2.02 Term. The Term of this Agreement is as provided in Section 3.0 of Attachment "A".

2.03 Compliance with Laws, Regulations, and Ordinances. Customer shall be solely responsible for insuring that the installation and operation of the Retrofit Equipment meets all Federal, State, and local regulatory and permit requirements.

2.04 Provision of Invoices. Customer agrees to provide copies of all invoices, receipts or statements associated with the purchase and installation of the Retrofit Equipment prior to the issuance of any rebates, or as requested in writing. Customer agrees to provide any other information requested, which is related to the Retrofit Equipment, such as maintenance and repair records.

2.05 Right to Inspect. Customer agrees to grant authorized representative's reasonable access to the Site for the sole purpose of inspecting the use and operation of the Retrofit Equipment.

2.06 Compliance with Regulations. During the Term of this Agreement, Customer agrees to comply with all applicable (i) drought and water conservation laws, ordinances, rules and regulations and (ii) water quality laws, ordinances, rules and regulations (all of the foregoing being "Applicable Rules"). Notwithstanding the foregoing, if Customer is a governmental entity, Customer agrees that it will comply with said Applicable Rules as if Customer were a private entity, and there is no exemption to compliance with Applicable Rules in this Section 2.06 for governmental entities, nor may the Applicable Rules be deemed "not applicable" to governmental entities for purposes of this Section 2.06.

### 3.0 Obligations and Rights.

3.01 Payment of Rebate(s). \_\_\_\_\_ will pay Customer the rebate(s) provided in Attachment "A" for the installed cost of the Retrofit Equipment at the Site. The rebate will be paid to the Customer within 30 days following the Effective Date provided the utility has received and approved all invoices and verified installation of the retrofit equipment. The rebate will be given in a direct check as provided in section 5.0 of Attachment "A".

3.02 Administrator of Agreement. The designated administrator of this Agreement for \_\_\_\_\_ for all purposes is as provided in Section 6.0 of Attachment "A". \_\_\_\_\_ may, at its sole discretion, change the designated administrator of this Agreement at any time.

3.03 Data Compilation. \_\_\_\_\_ may, at its discretion, review, compile, and analyze pre and post-retrofit water consumption data in connection with this

Agreement. \_\_\_\_\_ will provide Customer with any analytical results of all compiled data upon receipt of Customer's written request for such information. The provisions of this Section 3.03 shall survive the expiration of this Agreement.

3.04 Publication of Data. Customer acknowledges and agrees that \_\_\_\_\_ may publish, advertise, or disclose any and all data or information compiled, gathered or assembled by \_\_\_\_\_ in connection with this Agreement, including but not limited to, water consumption data, watersavings, Retrofit Equipment, Site(s), installed costs, and rebate(s). \_\_\_\_\_ agrees to provide Customer with copies of any such publications, advertisements or disclosures upon receipt of Customer's written request for such information.

#### 4.00 Conditions of Rebate.

4.01 Calculation of Savings. \_\_\_\_\_ shall have the right but not the obligation to calculate the total water savings, on an as needed basis, in order to determine the success of the retrofit in achieving the predicted results as set forth in Attachment A. The total water savings calculation will compare pre-retrofit consumption data with post-retrofit consumption data, taking into account occupancy rates, expansion and modifications, and any other factor affecting total water consumption.

#### 4.02 Recovery of Rebates.

(a) If pursuant to the calculation set forth in section 4.01 herein, \_\_\_\_\_ determines that the retrofitted equipment has failed to achieve predicted results, or has been removed or not been maintained properly, Customer shall have 30 calendar days from receipt of \_\_\_\_\_ determination to remedy the cause of the determination. If Customer fails to timely correct the cause of the determination, all or a portion of Customer's rebate(s) shall be repaid to \_\_\_\_\_. The amount to be repaid shall be determined by calculating the actual water savings as a percent of the predicted savings and multiplying that percentage by the initial rebate amount. The product of the calculation shall be then subtracted from the initial rebate amount to determine the amount to be repaid to \_\_\_\_\_.

(b) If \_\_\_\_\_ determines that Customer has violated Section 2.06 of this Agreement, Customer's rebate(s) shall be subject to repayment to \_\_\_\_\_ upon written notification from \_\_\_\_\_. Customer agrees that such repayment is not a penalty but rather represents an equitable termination and recovery of \_\_\_\_\_ monetary obligations under of this Agreement, as Customer's representations to \_\_\_\_\_ in Section 2.06 were a material inducement to \_\_\_\_\_ entering into this Agreement and paying Customer's rebate(s).

(c) Any amount to be repaid to \_\_\_\_\_ shall be due and payable within 5 business days of Customer's receipt of a bill or demand therefore. The terms and provisions of this Section 4.02 shall survive the expiration of this Agreement.

## 5.00 Miscellaneous

5.01 Governing Law. This Agreement shall be governed and construed in all respects, including validity, interpretation, and effect, by the laws of the State of Texas.

5.02 Venue. The obligations and undertaking of each of the parties to this Agreement shall be performed in \_\_\_\_\_ County, Texas, and venue for any litigation shall be in \_\_\_\_\_ County, Texas.

5.03 No Third Party-Beneficiary. \_\_\_\_\_ and Customer enter into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto and their permitted assigns.

5.04 Captions. The captions and headings appearing in this Agreement are inserted merely to facilitate reference and are not to be considered a part of this Agreement and in no way shall they affect the interpretation of any of the provisions of this Agreement.

5.05 Modification. This Agreement may be modified only by an instrument signed by the duly authorized representatives of each of the parties.

5.06 Waiver. Any waiver at any time by either party with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

5.07 Approvals. All approvals and agreements by either party that are required or contemplated under this Agreement must be in writing unless other means are specifically permitted, and must be signed by the person authorized to give such approvals and make such agreements for that party. The persons authorized to give such approvals and make such agreements for the parties shall, until changed as hereinafter provided, be as follows: for Customer, the undersigned representative, and for \_\_\_\_\_, the undersigned representative. Each party shall have the right from time to time and at any time to change the person authorized to give such approvals and make such agreements by giving at least five (5) days' written notice to the other party.

5.08 Force Majeure. If either party is rendered unable by Force Majeure to carry out, in whole or in part, its obligations under this Agreement and such party gives the other written notice and full details of the event causing nonperformance within 10 business days of the event, including anticipated extent of such delay, then during the pendency of such Force Majeure but for no longer period, such party shall be excused from its obligations under this Agreement to the extent required, other than to make payments due, and shall not be liable for any loss or damage for delay or for nonperformance due to Force Majeure. For purposes of this Agreement, Force Majeure shall mean any event or act not reasonably within a party's control, including but

not limited to, acts of God, strikes, lock-outs, or other industrial disturbances, acts of the public enemy, orders of any kind of the federal or state government, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals.

5.09 Indemnification. Customer agrees to and shall indemnify and hold harmless the City of \_\_\_\_\_, its officers, agents and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising out this Agreement or in connection with the installation, maintenance, repair, use, or operation of the Retrofit Equipment, REGARDLESS OF WHETHER SUCH INJURY, DEATH, OR DAMAGE IS CAUSED IN PART OR THROUGH THE SOLE OR CONCURRENT NEGLIGENCE OF THE UTILITY OR ITS AUTHORIZED REPRESENTATIVES. It is the expressed intention of the parties hereto, that the indemnity provided for in this paragraph is indemnity by Customer to indemnify and protect the City of \_\_\_\_\_ FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE.

5.10 Entire Agreement. This Agreement contains the entire agreement between \_\_\_\_\_ and Customer and contains all of the terms and conditions agreed upon. This Agreement supersedes all other arrangements, oral or otherwise, regarding the subject of the Agreement.

5.11 Severability. Should any part, paragraph, sentence, clause, or word of this Agreement for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be invalid or ineffective, the remainder shall nevertheless stand effective and valid as if this Agreement had been executed without the portion held to be invalid or ineffective.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Agreement to be duly executed as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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



### ATTACHMENT "A"

**1.0 The Retrofit Equipment.**

The Retrofit Equipment subject to this Agreement is (describe Retrofit Equipment): *The retrofit involves the retrofit and installation of the following water conserving process equipment.*

Project	Life	Installed Cost
<i>Project description</i>	___ Years	\$
Total Acre-feet Water Saved	___ Years	
<b>Total rebate amount</b>		<b>\$</b>

**2.0 Site(s).** The Retrofit Equipment has been installed at (*describe location*):

- \_\_\_\_\_

**3.0 Term.**

The Term of this Agreement is \_\_\_ years after the Effective Date.

**4.0 Anticipated Annual Savings.**

The anticipated annual water savings resulting from this retrofit is (in gallons):

- \_\_\_\_\_

**5.0 Payment of Rebate.**

- The total authorized rebate is \_\_\_\_\_
- The entire rebate will be supplied to Customer via direct check request: *one installment in the amount of \$\_\_\_\_\_ upon submittal of all invoices and verification of installation of all equipment listed in Section 1.0 of Attachment A.*

**6.0 Administrator.**

The utility’s designated administrator of this Agreement is \_\_\_\_\_.

**7.0 Financial and Rebate Calculations.**

- The \$\_\_\_\_\_ rebate will result in \_\_\_\_\_ acre-feet of water saved of the \_\_\_ year life term of the equipment. The cost per acre-foot for water saved over a \_\_\_-year period is \$\_\_\_\_\_ per acre-foot. The rebate calculations are based actual pre and post meter data.

Based on analysis of the information provided by the \_\_\_\_\_ and verification of production and equipment flow rates, the authorized rebate amount is \$\_\_\_\_\_.