

SELF-DIRECTION CREDIT PROGRAM AGREEMENT (UT Schedule 192)

This Program Agreement (“Agreement”) is made and entered into as of _____ by and between Rocky Mountain Power and _____ (“Customer”). The parties enter into this Agreement to establish the general terms and conditions that will apply to the Eligible Projects (“Project”), as described in Exhibit B, to be performed by the parties pursuant to the Self-Direction Credit Program.

RECITALS

- A. Rocky Mountain Power Customers can self-direct Schedule 193 DSM Customer Efficiency Service charges into cost effective demand side management (DSM) projects within their own facilities in accordance with Schedule 192, including any future commission-approved revisions to Schedule 192, and the Self-Direction Credit Program Manual (“Program Manual”) available from the Self-Direction Administrator.
- B. Customer is an existing customer of Rocky Mountain Power on an eligible industrial or commercial schedule, in accordance with Schedule 193, with locations as specified in Exhibit B (the “Facility”).
- C. Information regarding the Eligible Measures (“Measures”) and associated Self Direction Credit (“Credit”) is provided with the Project Approval Letter (“Approval Letter”) included in Exhibit B.

THEREFORE, Rocky Mountain Power and Customer agree as follows:

AGREEMENT

Definitions. All capitalized terms not otherwise defined in this Agreement shall have the meaning ascribed to them in Tariff Schedule 192, attached as Exhibit A to this Agreement. All provisions of the Tariff Schedule attached as Exhibit A and the Program Manual apply to this Agreement, in addition to the terms of the Agreement itself.

- 1. **Limitation on Damages.** Customer shall independently evaluate any advice or direction given by Rocky Mountain Power related to estimates of electricity savings or the cost, selection or installation of Measures. **IN NO EVENT WILL ROCKY MOUNTAIN POWER AND ITS CONSULTANTS BE LIABLE FOR THE FAILURE OF CUSTOMER TO ACHIEVE A SPECIFIED AMOUNT OF ENERGY SAVINGS, THE OPERATION OF CUSTOMER’S FACILITIES, OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT OR THE INSTALLATION OF MEASURES, AND IN NO EVENT SHALL ROCKY MOUNTAIN POWER’S LIABILITY EXCEED ANY OBLIGATION TO PAY THE CREDIT FOR WHICH CUSTOMER IS ELIGIBLE UNDER SCHEDULE 192.**
- 2. **Toxic Materials.** Rocky Mountain Power and its consultants shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials of any kind in

Customer Name: _____

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connection with Customer's Facility, including without limitation, asbestos, asbestos products, polychlorinated biphenyls, or other toxic substances.

3. **Property Damage, Injury, or Death.** Rocky Mountain Power and its consultants shall not be liable for damage to property or injury or death of any person or persons in any way connected with or arising from actions of Customer or its agents under this Agreement. Customer shall hold harmless, defend and indemnify Rocky Mountain Power and its consultants as to any such claims.
4. **Confidential Information.** In consideration for the receipt of any Confidential Information from Customer, Rocky Mountain Power agrees to keep such information strictly confidential and not to disclose it to any third party.
 - 4.1. Confidential Information shall mean business plans of Customer or operating data related to the Customer's Facility, disclosed to Rocky Mountain Power and/or the Self Direction Administrator, during the course of the project review or any follow-up visits at the Customer's Facility, and identified by Customer in writing as confidential. Confidential information will not include information which (i) is or becomes part of the public knowledge or literature, (ii) is approved for release by the written authorization of its Customer, or (iii) is rightfully disclosed by operation of law, regulation, or order by a court or governmental agency.
 - 4.2. Rocky Mountain Power and/or the Self Direction Administrator may disclose Confidential Information to energy specialists utilized at Customer's Facility. Prior to such disclosure, Rocky Mountain Power and/or the Self Direction Administrator shall require that energy specialists agree in writing to be bound by these confidentiality provisions. At Customer's request, Rocky Mountain Power and/or the Self Direction Administrator will provide Customer with copies of any such agreements.
 - 4.3. Rocky Mountain Power's and or the Self Direction Administrator's obligation to protect Customer's Confidential Information will remain in force for the term of this Agreement.
5. **Cooperation by Customer.** Customer agrees to require its employees or contractors to cooperate with Rocky Mountain Power, the Self-Direction Administrator and Rocky Mountain Power's approved energy specialists and to provide Facility operating data and energy use evaluation assistance needed for Rocky Mountain Power to complete its required activities.
6. Customer agrees to transfer to Rocky Mountain Power all "Environmental Attributes" attributable to the Eligible Project or its operation. Environmental Attributes include any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, resulting from the avoidance of the emission of any substance to the air, soil or water at or by PacifiCorp generating facilities through reduced generation of energy or other savings or offsets on account of the Eligible Project. Customer will not claim ownership of any Environmental Attributes. As long as Customer at the same time states the Eligible Project was made possible with funding from Rocky Mountain Power, Customer may claim that it is facilitating the production of the Environmental Attributes attributable to the Eligible Project.
7. **Attorneys' Fees.** If arbitration or litigation is commenced by either party to enforce or interpret any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees at the arbitration, at trial, on appeal, and on any petition for review.
8. **Exhibits.** Exhibits A and B are hereby incorporated into a made a part of this Agreement

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9. Entire Agreement/Modification. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and unless otherwise provided in this Agreement, no modification or waiver of any of the provisions, or any future representation, promise, or addition, shall be binding upon the parties unless made in writing and signed by both parties.
10. Disputes/Governing Law. This Agreement shall be exclusively governed by and interpreted in accordance with the laws of the state where the Facility is located, excluding choice of law rules. Any litigation between the parties shall be prosecuted only in the state or federal courts of the state where the Facility is located.
11. Term. This Agreement begins as of the date above first written and shall terminate when Customer receives all approved credits or Schedule 192 expires.
12. Termination by Rocky Mountain Power. At Rocky Mountain Power's option, in addition to any other rights and remedies which Rocky Mountain Power may have at law or in equity, Rocky Mountain Power may terminate this Agreement by written notice upon Customer, if:
 - 12.1. Any petition is filed, a receiver is appointed for Customer's properties, or any proceeding is commenced by or against Customer for relief under any bankruptcy or insolvency laws;
 - 12.2. Customer suspends or abandons the operation of all or a substantial portion of Customer's business; or
 - 12.3. Customer is in breach of any material term or condition of this Agreement, Rocky Mountain Power has notified Customer of the breach, and Customer has not cured the breach within thirty (30) days. Customer's failure to complete a Pre-qualified project set forth in Exhibit B shall not put Customer in breach of this Agreement, but will affect credit made to Customer under this agreement.
13. Termination by Customer. At Customer's option, in addition to any other rights and remedies that Customer may have at law or in equity, Customer may terminate this Agreement by written notice upon Rocky Mountain Power, if:
 - 13.1. Any petition is filed, a receiver is appointed for Rocky Mountain Power's properties, or any proceeding is commenced by or against Rocky Mountain Power for relief under any bankruptcy or insolvency laws;
 - 13.2. Rocky Mountain Power is in breach of any material term or condition of this Agreement, Customer has notified Rocky Mountain Power of the breach, and Rocky Mountain Power has not cured the breach within thirty (30) days; or
 - 13.3. Rocky Mountain Power suspends or abandons the operation of all or a substantial portion of Rocky Mountain Power's business.
14. Force Majeure. Neither party shall be considered in default in the performance of their obligations under this Agreement to the extent that performance is delayed or prevented due to Force Majeure. Force Majeure is defined as flood, tornado, fire and similar acts of God which are beyond the control of, and without the fault or negligence of, the party claiming Force Majeure. The non-performing party, as soon as practicable but in any event no more than two (2) weeks after the occurrence of the Force Majeure, shall give the other party written

notice describing the particulars of the occurrence, and its anticipated duration. The following conditions shall not be considered as Force Majeure:

14.1. Lack of or unavailability of personnel to install the Measure(s) at a Facility; or

14.2. Unavailability of the Measures or other equipment from the manufacturer or supplier.

CUSTOMER

ROCKY MOUNTAIN POWER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SELF-DIRECTION CREDIT PROGRAM AGREEMENT**EXHIBIT A**

Tariff Schedule 192

Cover Sheet Only

Approved Schedule 192 on file with the Utah Public Service Commission and available on Company web site.

SELF-DIRECTION CREDIT PROGRAM AGREEMENT
(UT Schedule 192)

EXHIBIT B

Project Approval Letter(s)

Cover Sheet Only
Attach Letters