

HomeVantage[®] Service Referral Contractor Agreement

THIS AGREEMENT is entered into this _____ day of _____, 200__ (“Effective Date”) by and between Colorado Springs Utilities (“Springs Utilities”), an enterprise of the City of Colorado Springs, a home rule city and municipal corporation, and _____ (“Contractor”), with a business address of _____.

Each of the parties may be individually referred to as a “Party” or collectively, as the “Parties.”

RECITALS

- A. Springs Utilities provides electric, natural gas, water and wastewater utility services to customers within the city limits of Colorado Springs and within its certificated service territories.
- B. Springs Utilities is offering the HomeVantage[®] Service Referral (the “Program”), which provides an opportunity for customers to obtain free referrals for local, qualified utility-related services contractors (collectively, the “Referrals”).
- C. Springs Utilities desires Contractor to participate in the Program to offer customers utility-related services.
- D. Contractor desires to participate in the Program to offer customers utility-related services.

NOW, THEREFORE, in consideration of the mutual covenants and benefits and agreements contained herein, Springs Utilities and Contractor agree to the following terms and conditions.

AGREEMENT

1. **Term.** This Agreement shall be effective for three (3) years from the Effective Date. Thereafter, this Agreement shall automatically renew for successive terms of one (1) year each unless either Party gives the other Party written notice of non-renewal at least thirty (30) days prior to renewal, or either Party terminates this Agreement pursuant to the terms herein.
2. **Obligations of Contractor.** Contractor acknowledges and agrees to the following obligations during the Term of this Agreement:
 - a) Maintain in good standing any state or local licenses required by Contractor’s trade and upon Springs Utilities’ request, provide a copy of all required licenses upon execution of this Agreement and upon renewal of licensure.

- b) Provide sufficient evidence to Springs Utilities that Contractor has been in business in Contractor's particular trade in Colorado Springs for at least one (1) year.
- c) Maintain a local operation of business in the Springs Utilities service territory.
- d) Carry and maintain the minimum legal limits of commercial general liability and vehicle liability insurance as required by the State of Colorado and Pikes Peak Regional Building and provide proof of insurance to Springs Utilities upon request. Additionally, Contractor shall carry and maintain any insurance coverage required by applicable law. Springs Utilities expressly reserves the right to require, in its discretion and at any time, any other/additional insurance coverage, which may vary by the type of services provided by the Contractor.
- e) Abide by the HomeVantage[®] Contractor Code of Ethics attached as Exhibit A to this Agreement at all times when promoting the Program and when providing any services under the Program.
- f) Resolve any dispute between Contractor and a customer who obtains Program referral using Dispute Solutions of the Better Business Bureau of the Pikes Peak Region.
- g) Agree to Springs Utilities complaint suspension and removal policy attached as Exhibit B to the Agreement.
- h) Membership with the Better Business Bureau of the Pikes Peak Region (BBB) is **required**. Additionally, Contractor must be in good standing with the BBB.
- i) Utilize sufficient and reasonable customer communication tools in conducting Contractor's business, such as telephone, facsimile machine, pager and electronic mail. Contractor must be accessible by telephone during regular working hours (i.e., 8:00 a.m. till 5:00 p.m. Monday through Friday).
- j) Provide sufficient advance notice to Springs Utilities if Contractor needs more Program materials.
- k) Contractor shall not represent, in any manner, to customers offered the Program that Contractor is an agent of Springs Utilities and any work performed by Contractor for a customer is not performed by or through Springs Utilities. Any written contracts between Contractor and customer(s) will state that Contractor is not an agent of Springs Utilities and any work performed by Contractor for customer is not performed by or through Springs Utilities.
- l) Comply with all applicable laws, including inspections and city and building codes and Springs Utilities technical specifications for all

work or services performed by Contractor, including obtaining all required permits.

- m) Provide employees with appropriate identification of their respective company.
- n) Equip vehicles with appropriate identification of Contractor's respective company and the HomeVantage[®] logo as provided by Springs Utilities without alteration or reproduction. The logo shall be prominently displayed on the vehicle(s) as required by Springs Utilities. Additionally, Contractor shall prominently display the HomeVantage[®] logo on all uniforms or other apparel as required by Springs Utilities. Contractor shall also distribute literature provided by Springs Utilities in the manner required by Springs Utilities. When providing services under the program, Contractor shall not sell or promote services or products, which are determined by Springs Utilities to be objectionable.
- o) Respond to customer within 24 hours of call for non-emergency work, and emergency service within four (4) hours unless prohibited by inclement weather that precludes driving or unless repair parts are not available.
- p) Arrive to customer's residence within fifteen (15) minutes of scheduled appointment time.
- q) If Contractor is unable to make appointment within allotted time period (15 minutes), Contractor must contact customer to reschedule.
- r) In the event a customer is not able to reschedule due to a Contractor not making the appointment time, the Contractor must find another Service Referral Contractor to provide the service for the customer.
- s) Contractor must agree to abide by HomeVantage[®] logo usage guidelines attached as Exhibit C.
- t) Maintain a reserve fund of \$500 with Springs Utilities to be used for dispute resolution, service guarantee (attached as Exhibit D to the Agreement) and non-payment of Program fees. Such reserve fund shall be a non-interest bearing deposit with Springs Utilities, the balance shall be refunded upon expiration or termination of Contractor from the Program, provided there are no outstanding deductions to be made in accordance with Exhibit D.
- u) If any Contractor is providing any landscaping, sprinkler installation, or similar type services, Contractor shall promote and if consistent with customer desires employ standard Xeriscape practices for the Pikes Peak region all in accordance with Exhibit E, which may be modified from time to time by Springs Utilities.

- v) If any Contractor is providing photovoltaic (PV) design and installation services, Contractor must be certified for PV by the Colorado Solar Energy Industries Association (CoSEIA) or the North American Board of Certified Energy Practitioners (NABCEP). CoSEIA and/or NABCEP certifications must be current (Exhibit F).
- w) Abide by any reasonable guidelines established by Springs Utilities concerning the content of any advertising, marketing, or other communications with customer(s). The content of any mass marketing or advertising concerning the Program must be approved in writing by Springs Utilities. Contractor shall not reproduce any logos or other intellectual property which belong to Springs Utilities without Springs Utilities express written permission.

3. **Obligations of Springs Utilities.** Springs Utilities acknowledges and agrees to the following obligations during the Term of this Agreement:

- a) Provide Contractor with referrals based on type of work performed, hours of operation and zip code areas served through a rotation of eligible Contractors. Notwithstanding the foregoing, all referrals will be provided to Contractor at Springs Utilities complete and sole discretion. Contractor acknowledges and agrees that it is not guaranteed any referrals whatsoever.
- b) Assure sufficient marketing materials are available to Contractor to enable dissemination of Program information to customers.
- c) Market the Program to Springs Utilities customers, at Springs Utilities sole and complete discretion.
- d) Manage the contractor network.

4. **Independent Contractor.** During the Term of this Agreement, Contractor shall act at all times as an independent contractor and shall have the responsibility for and control over the details and means of performing any work. Contractor acknowledges it has the duty to provide continuous, adequate supervision of its personnel and subcontractors, if any. Nowhere in this Agreement shall it be construed or implied that Contractor and any of its subcontractors, affiliates, employees, agents, or representatives are employees, representatives, or agents of Springs Utilities.

5. **Termination.** This Agreement may be terminated as follows:

- a) by either Party without cause upon thirty (30) days' written notice from the other Party;
- b) by either Party for cause. "Cause" is defined as a material breach of this Agreement which is not cured by the breaching Party within ten (10) days' written notice by the non-breaching Party or sooner as the circumstances may require. If any breach, by its nature, is not capable of being cured, then the non-breaching party may terminate this Agreement.
- c) As recommended by the BBB based on repeated complaints about Contractor and/or dispute resolution issues.

Upon termination, Contractor shall immediately cease offering the Program to customers and shall return any and all Program materials to Springs Utilities, including any marketing materials and any logos or other items, which contain any intellectual property belonging to Springs Utilities. Contractor shall immediately remove and cease using the HomeVantage® logo.

6. **Dispute Resolution.**

- a) If a dispute arises between the Parties relating to this Agreement, the following procedure applies:
 - i) The Parties shall hold a meeting attended by persons with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution. The meeting shall be held promptly but in no event later than fifteen (15) calendar days after the dispute arises. The meeting shall not be deemed to modify or reduce the obligations and liabilities of the Parties or be deemed a waiver by a Party of any remedies to which such Party would otherwise be entitled unless otherwise agreed to by the Parties in writing.
 - ii) If, within fifteen (15) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.
 - iii) The Parties will jointly appoint a mutually acceptable mediator. If they fail to do so within ten (10) days from the conclusion of the negotiation period set forth in (ii) above, they shall each select a mediator. The two mediators will then appoint, within five (5) days, a third mediator who shall, as the sole mediator, conduct mediation for the Parties.

b) The Parties agree to participate in good faith in the mediation and related negotiations for a ten-day period. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the Parties are not successful in resolving the dispute through mediation, then the parties shall be free to litigate the matter, and agree that in the event of such litigation, the exclusive venue for such litigation shall be the District Court for El Paso County, State of Colorado.

7. **Non-Discrimination.** Springs Utilities is committed to equal employment opportunity for all and maintains and implements equal opportunity and affirmative action where necessary in all of its daily operations. Springs Utilities policy is that no person shall be discriminated against because of race, color, national origin or ancestry, sex, age, religious convictions, veteran status, disability or political beliefs. Contractor shall comply with all federal and state nondiscrimination laws. Contractor shall also comply with Springs Utilities Equal Employment Opportunity/Affirmative Action policies regarding nondiscrimination and harassment, which includes sexual harassment, in the conduct of its business while interacting with Springs Utilities employees. Contractor will cooperate with Springs Utilities in using Contractor's best efforts to ensure that Disadvantaged Business Enterprises are afforded the full opportunity to compete for subcontracts or work under this Agreement.

8. **Indemnification/Risk Allocation/Liability.**

a) Contractor hereby releases Springs Utilities and shall fully protect, defend, indemnify and hold harmless Springs Utilities, the City of Colorado Springs, their officers, City Council, Utilities Board, directors, employees, agents and representatives from and against any and all losses, claims, causes of action, or liability of any nature arising out of or related to Contractor's obligations under this Agreement and Contractor's performance of work for customers whose Improvements are financed by the Program.

b) Nothing in this Agreement shall be interpreted to limit or prevent the protections afforded to Springs Utilities under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

c) Notwithstanding any other provision of this Agreement, in no event shall Springs Utilities, the City of Colorado Springs, their officers, City Council, Utilities Board, directors, employees, agents and representatives be liable to Contractor for any special, incidental, indirect, or consequential damages related to loss of profits or revenue; loss of use; loss of opportunity; loss of goodwill; cost of substitute facilities, goods or services; cost of capital; and claims of customers for such damages.

9. **Notice.** All notices necessary or required under this Agreement shall be in writing and shall be personally delivered, sent by overnight delivery service, or mailed by certified mail, postage prepaid and return receipt requested, as follows:

If to Springs Utilities: COLORADO SPRINGS UTILITIES
Attn: HomeVantage® Service Referral
Contractor Account Manager, Customer
Service Department
111 S. Cascade Avenue
Colorado Springs, Colorado 80903
Phone: (719) 668-3829

Or mailing address:

Attn: HomeVantage® Service Referral
Contractor Account Manager, Customer
Service Department
PO Box 1103, Mail Code 1025
Colorado Springs, Colorado 80947
Phone: (719) 668-3829

If to Contractor: CONTRACTOR

Phone: _____

Notice given by personal delivery, overnight delivery or mail shall be effective upon actual receipt. The Parties may change any address to which Notice is to be given by giving written notice as provided above of such change of address.

10. **Assignment.** There shall be no assignment of the rights or obligations contained in this Agreement by either Party without the prior written consent by the other Party. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Springs Utilities and Contractor.

11. **Severability.** If any provision of this Agreement shall be found to be illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

12. **Governing Law; Venue.** This Agreement shall be construed in accordance with the laws of the State of Colorado, the Colorado Springs City Charter, City Code, Ordinances, Rules and Regulations. In the event of any dispute over the Agreement's terms and conditions, the exclusive venue and

jurisdiction for any litigation arising thereunder shall be in the District Court for El Paso County, Colorado,

13. **Amendments.** Any waiver, modification, or amendment of this Agreement shall be effective only if in writing and signed by an authorized representative of Springs Utilities and Contractor.

14. **Entire Agreement.** This Agreement, with attachments, constitutes the entire agreement between the Parties and supersedes all previous written or oral communications, understandings and agreements between the Parties unless specifically stated herein. Email and all other electronic (including voice) communications from Springs Utilities in connection with this agreement are for informational purposes only. No such communication is intended by Springs Utilities to constitute either an electronic record or an electronic signature, or to constitute any agreement by Springs Utilities to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

COLORADO SPRINGS UTILITIES

By: _____

Printed Name: _____

Title _____

CONTRACTOR

By: _____

Printed Name: _____

Title _____

Attachment A
HOMEVANTAGE[®] SERVICE REFERRAL
CONTRACTOR CODE OF ETHICS

Each Contractor participating in a HomeVantage[®] program offered by Colorado Springs Utilities also represents Colorado Springs Utilities and its high standards of quality and customer service. A contractor's association with Colorado Springs Utilities requires specific responsibilities, including:

Responsibility to Customers

The Contractor will pursue the customer's legitimate needs. No Contractor shall place its own needs above those of the customer in the performance of work for that customer.

The Contractor will recommend and install the right equipment, which is sized correctly and will operate safely for the customer, with full disclosure of all risks associated with the use of the equipment.

The Contractor will communicate with customers about its experience, equipment performance, operating and maintenance costs, and equipment quality in a forthright, non-deceptive manner.

The Contractor will communicate with customers in the manner the customer requests, such as by e-mail, fax or telephone.

The Contractor will commit to follow-up communication with each customer to insure customer satisfaction in a timely manner.

The Contractor will provide prompt, courteous and reliable service, while attempting to perform services at the customer's convenience, including the initial phone call, setting appointment time, and follow-up visits. If the Contractor of choice cannot meet the customer's timeframe, the Contractor will inform the customer and proactively work towards a solution that meets the customer's needs, including finding another HomeVantage[®] Service Referral Contractor to perform the duties.

The Contractor and employees agree to refrain from publicly or privately speaking negatively about competing firms.

The Contractor agrees that if a dispute with a customer arises, it will make every attempt to correct the problem. If a dispute cannot be resolved, the contractor agrees to follow a prescribed procedure for dispute resolution, which may include mediation or arbitration through the Better Business Bureau of the Pikes Peak Region, and agrees to be bound by the findings of the process.

Responsibility to Trade/Industry

The Contractor will work to improve its respective industry by:

- Supporting continuous training and skill building for self and staff
- Keeping up with changes and advances in technology
- Reporting all non-licensed or non-permitted work

Colorado Springs Utilities also encourages participation in related trade and industry associations, as well as requires membership with the Better Business Bureau of the Pikes Peak Region.

Professionalism

The Contractor will conduct business in such a manner displaying the highest degree of professional behavior bringing credit to its trade and industry. The Contractor will be mindful of the trust placed in them by their customer, and will respect that trust by:

- Willingly presenting customer references to the customer upon request
- Providing every customer with a clear, written estimate of the cost of service, before work begins and before accepting any payments
- Keeping all customer data confidential
- Conduction business in the appropriate dress and uniform
- Conducting business with the appropriate equipment and tools.

Responsibility to Community

The Contractor will respect the community within which they do business by obeying all civil laws and respecting the rights of others.

The Contractor will act in an environmentally friendly manner, working to protect both the internal environment of each customer and the surrounding community. Each Contractor will comply with all health and safety standards and applicable laws.

Attachment B
**HOMEVANTAGE® SERVICE REFERRAL COMPLAINT SUSPENSION &
REMOVAL POLICY**

More than two complaints of the same type or three total complaints in one month concerning the Contractor shall result in the Contractor being suspended from referrals until complaints are resolved to the satisfaction of Colorado Springs Utilities. Once the complaints are resolved, the Contractor shall be placed on probation for one year. If during the probation, Contractor has any complaint which is of the same type as any previous complaint(s), Colorado Springs Utilities may terminate the Agreement, as provided for in the Agreement (such shall be deemed a material breach which cannot be cured and under the circumstances, Colorado Springs Utilities may terminate effective immediately), thereby removing Contractor from the Program.

Attachment C
HOMEVANTAGE® SERVICE REFERRAL
LOGO USAGE GUIDELINES

- Contractors on the program can only use the pre-approved collateral material supplied by Colorado Springs Utilities to include:
 - ✓ Magnets for vehicles and other company property
 - ✓ Patches and iron-ons for uniforms
 - ✓ Decals
 - ✓ Camera-ready artwork for print reproduction
 - ✓ And any other collateral material as supplied by Colorado Springs Utilities
- Contractors on the program may not use any other form of advertising of the HomeVantage® logo and/or HomeVantage® Service Referral program name other than that supplied and approved by Colorado Springs Utilities.
- Contractors on the program must abide by the Code of Advertising issued by the Better Business Bureau of the Pikes Peak Region, as may be amended from time to time.
- Contractors may be required by Colorado Springs Utilities to execute a license agreement with Colorado Springs Utilities, in the form and according to terms and conditions as specified by Colorado Springs Utilities. Contractor's failure to do so will result in termination of the Agreement by Colorado Springs Utilities.

Attachment D
HOMEVANTAGE[®] SERVICE REFERRAL PROGRAM
SERVICE GUARANTEES

Colorado Springs Utilities will provide a credit to a customer's utility bill for \$25 for the following occurrences, regardless of fault or claims by the Contractor that such were outside Contractor's reasonable control:

- Contractor fails to show up for scheduled appointment
- Contractor arrives at customer's residence more than fifteen (15) minutes after a scheduled appointment, without first notifying customer of rescheduled time
- Contractor fails to solve customer's initial problem on the first visit, when capable of doing so, or when Contractor reasonably should have been capable of doing so.

The credit described above will be deducted for the \$500 service level guarantee (reserve fund) established by the Contractor. In accordance with the Agreement, Contractor must maintain at all times \$500.00 in the service level guarantee. Colorado Springs Utilities may terminate the Agreement if Contractor fails to replenish the reserve fund within sixty days after any credits have been deducted as provided for above.

Attachment F
HOMEVANTAGE® SERVICE REFERRAL PROGRAM
Required Certifications for Photovoltaic (PV) Installers

- Contractors providing photovoltaic (PV) design and installation services must be certified for PV by the Colorado Solar Energy Industries Association (CoSEIA) or the North American Board of Certified Energy Practitioners (NABCEP).
- CoSEIA and/or NABCEP certifications must be current.