

CONTRACT NO. _____

BETWEEN

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Colorado River Storage Project -- Management Center

AND

[CONTRACTOR NAME]

FOR

PURCHASE OF ENERGY

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1. **PREAMBLE:** This CONTRACT is made this _____ day of _____, 2008, pursuant to the Reclamation Act, the Acts of Congress approved June 17, 1902 (32 Stat. 388); the Reclamation Act of 1939, dated August 4, 1939 (53 Stat. 1187); the Department of Energy Organization Act, dated August 4, 1977 (91 Stat. 565); the Energy Policy Act of 1992 (Public Law 102-486); and Acts amendatory or supplementary to the foregoing Acts; between the UNITED STATES OF AMERICA, acting by and through the Administrator, Western Area Power Administration, Department of Energy, hereinafter called Western, represented by the officer executing this Contract, hereinafter called the Contracting Officer, and Contractor Name, hereinafter called Contractor; each sometimes hereinafter individually called Party, and sometimes hereinafter collectively called the Parties.

2. **EXPLANATORY RECITALS:**

- 2.1 Western has entered into InterAgency Agreement No. _____ with the [Federal "Agency" on whose behalf capacity and energy are being acquired], for the purpose of providing power marketing services to the [Agency].

2.2 Western is purchasing the energy specified in this Contract for the sole benefit of the [Agency].

3. **AGREEMENT:** The Parties agree to the terms and conditions set forth herein.

4. **TERM OF CONTRACT:** This Contract shall become effective upon execution by both Parties and, except as otherwise provided for in Sections 7 and 8 hereof, shall continue in force and in effect from _____, to _____, or as otherwise provided for in the exhibits attached hereto.

5. **PURCHASE OF ENERGY:**

5.1 Western agrees to purchase the quantity of energy, as a [firm/non-firm] resource, as requested by the [Agency]. The energy will be delivered according to the Delivery Conditions identified in Exhibit A attached hereto.

5.2 All other terms and conditions not specified in this Contract shall be in accordance with applicable provisions of the WSPP Agreement, dated [date of current version]. However, if the provisions of the WSPP Agreement are in conflict with this Contract, the provisions of this Contract shall control.

6. **PAYMENTS:**

6.1 Contractor agrees that this Contract is contingent upon the ability of the [Agency] to make the required payments to the Contractor for said energy provided for in Interagency Agreement No. _____ between Western and the [Agency].

Contractor agrees to release Western from all liability in the event [Agency] is not able to fulfill this obligation.

6.2 Contractor agrees that the [Agency] shall have sole responsibility for all payments due for the energy provided under this Contract. Therefore, Contractor agrees to accept payment from the [Agency], for satisfaction of all obligations of the United

States under this Contract. Contractor further agrees that Western has no responsibility or obligation for any payments due hereunder.

- 6.3 In order to effectuate the provisions of Interagency Agreement No. _____ between the [Agency] and Western, the [Agency], shall be responsible for accepting and paying monthly invoices submitted by the Contractor for services provided to [Agency]. Contractor shall send monthly invoices for review, certification, and payment in accordance with Exhibit A of this Contract.
- 6.4 Any payments made by the [Agency], or Western acting on behalf of the [Agency], required under this Contract shall be in accordance with the Prompt Payment Act, 31 U.S.C. § 3900 et seq. and other applicable federal laws and [Agency] regulations and procedures.

7. **SUSPENSION OR TERMINATION FOR INADEQUACY OF FUNDING:**

- 7.1 It is agreed and understood that [Agency] or Western acting on behalf of the [Agency], shall make all payments due and payable under this Contract. Should for any reason [Agency] have inadequate funding to make the required payments, notice of said insufficiency shall immediately be provided to Western and to Contractor. In such circumstance, Contractor shall have the right to suspend performance as a result of said deficiency or shall have the right to terminate this Contract as a result of said deficiency and shall be entitled to recover damages, or, if applicable a termination payment calculated in accordance with Section 21 or Section 22 of the WSPP Agreement, excluding the arbitration provisions of such agreement, from [Agency], as limited by Section 8 of this Contract.
- 7.2 If during the pendency of any suspension period any insufficiency giving rise to such suspension no longer exists and [Agency] is able to make the payments

required hereunder, Contractor shall have the right to resume performance hereunder, and performance shall commence on a date mutually agreeable to Contractor, Western, and [Agency].

8. **DEFAULT BY CONTRACTOR:** Except for the Contractor's right to suspend or terminate performance under Section 7 hereof, the Contractor's failure to deliver energy in accordance with the Delivery Conditions identified in Exhibit A hereto shall relieve [Agency] of any obligation to make payments provided for in Section 6 hereof. Should the Contractor fail to deliver energy as specified herein for any two (2) consecutive days or any five (5) total days and such failure to deliver is not excused by Uncontrollable Forces or excused by this Contract or the WSPP Agreement, Western shall have the right to declare the Contractor in default and to terminate this Contract in accordance with the terms of the WSPP Agreement. These rights shall be in addition to all other rights and remedies available to [Agency], either by law or in equity, as the third party beneficiary to this Contract for breach of the terms hereof. In the event of a default by the Contractor, the Contractor shall not be entitled to recover damages, or, if applicable a termination payment calculated in accordance with Section 21 or Section 22 of the WSPP Agreement.

9. **CONTRACT LIMITATIONS:**

- 9.1 Contractor recognizes that Western finances its operations by charging its electric service customers rates which will cover the costs of producing and transmitting the electric energy associated with each project and agrees that neither Western nor Western's customers other than the [Agency] shall have responsibility for paying for any and all claims under this Contract. Contractor acknowledges and recognizes that any claims under this contract are the liability of [Agency]. All

claims against the [Agency] shall be subject to the Disputes section of this Contract.

9.2 Contractor agrees to indemnify and hold harmless Western, its employees, agents, or contractors, from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of Contractor's, its employees', agents', or subcontractors' activities under this Contract.

10. **EXHIBITS:** Inasmuch as certain provisions of this Contract may change during the term of this Contract, they will be set forth in exhibits as formulated and modified from time-to-time and as agreed upon by the Parties. The initial Exhibit A is attached hereto, made a part hereof, and shall be in force and effect in accordance with its respective terms until superseded by a subsequent Exhibit.

11. **FINANCIAL LIMITATIONS OF THE UNITED STATES:**

11.1 Contractor recognizes and accepts that all financial obligations under this Contract are the responsibility of and will be paid for by [Agency].

11.2 Continued expenditures by Western are contingent upon Congress making the necessary authorizations required for the continued performance of Western's obligations to procure power services on behalf of the [Agency] under this Contract. In case such authorization is not made, Contractor hereby releases Western from its contractual obligations and from all liability due to the failure of Congress to make such authorization.

11.3 Where activities provided for in the Contract extend beyond the current fiscal year, continued expenditures by the United States are contingent upon Congress

making the necessary appropriations required for the continued performance of the United States obligations under the contract. In case such appropriation is not made, the Contractor hereby releases the United States from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

11.4 In the event that Western fails to receive the authorizations or appropriations necessary for the performance of its obligations under this Contract, the Contractor and [Agency] may agree to continue the performance of this Contract.

12. **GENERAL POWER CONTRACT PROVISIONS:** The General Power Contract Provisions (GPCP), dated September 1, 2007, as they may apply are attached hereto, and are hereby made a part of this Contract the same as if they had been expressly set forth herein; provided that, if the provisions in the GPCP are in conflict with this Contract, the terms of this Contract shall control.

13. **AUTHORITY TO EXECUTE:** Each Party certifies that the individual executing this Contract on behalf of the Party is duly authorized to execute this Contract, which binds and obligates the Party.

The Parties have caused this Contract No. _____ to be executed the date first written above.

DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION

By _____

Title _____

Address _____

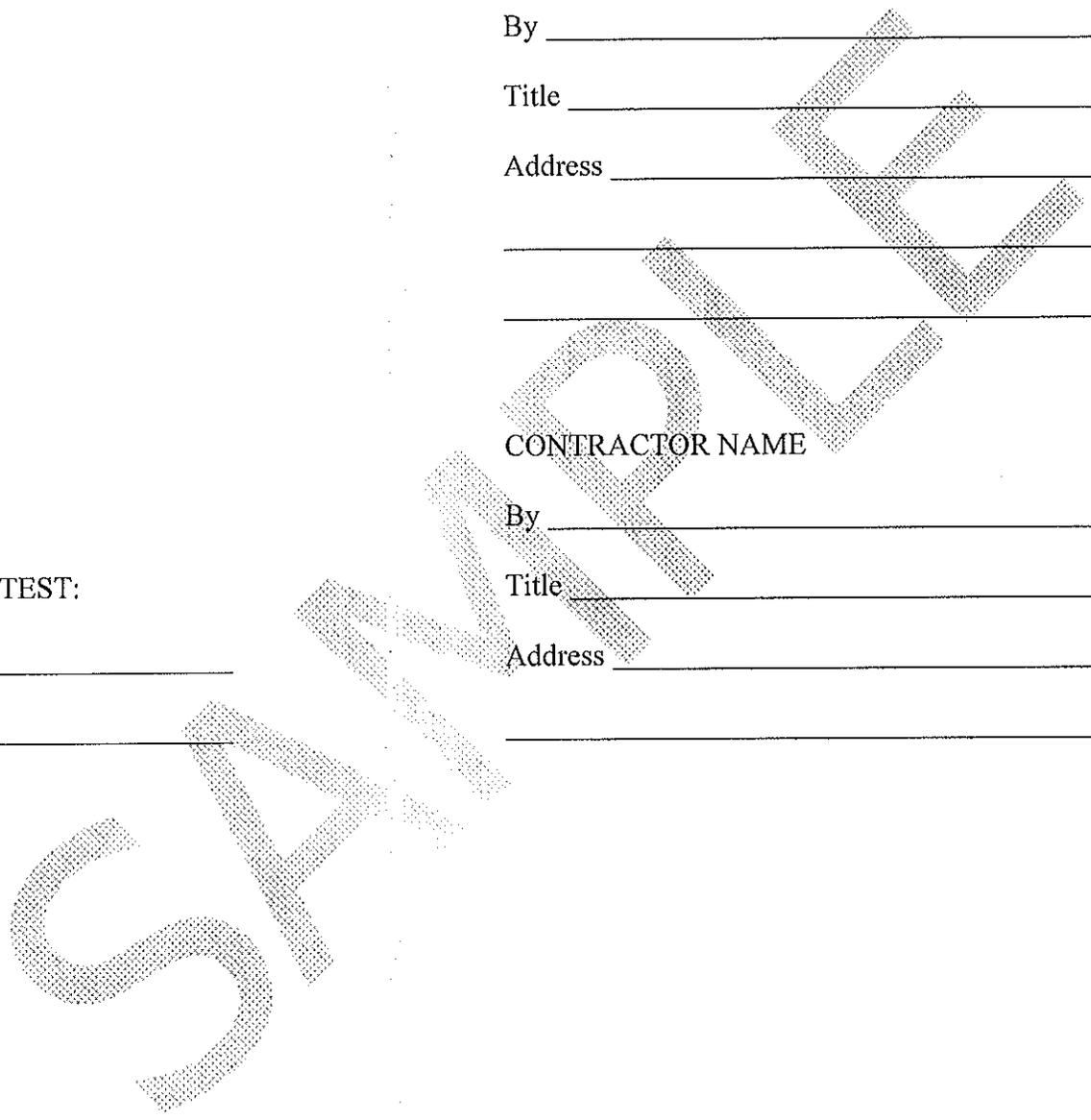
CONTRACTOR NAME

By _____

Title _____

Address _____

ATTEST:



DELIVERY CONDITIONS

1. This Exhibit A is made this _____ day of _____ 2008, to be effective under and as part of Contract No. _____ hereinafter called the Contract. This Exhibit A shall remain in effect until superseded by another Exhibit A; provided, that this Exhibit A, or any superseding Exhibit A, and this Contract shall terminate in accordance with the Term expiration date in subsection 5.4 of this Exhibit A.

2. **METERING:**

3. **TYPE:**

4. **PRODUCT (1) ENERGY:**

4.1 POINT OF DELIVERY:

4.2 RATE: \$00.00/MWH

4.3 AVAILABLE QUANTITIES:

- X MW OCTOBER
- X MW NOVEMBER
- X MW DECEMBER
- X MW JANUARY
- X MW FEBRUARY
- X MW MARCH
- X MW APRIL
- X MW MAY
- X MW JUNE
- X MW JULY
- X MW AUGUST
- X MW SEPTEMBER

4.4 TERM:

5. **PRODUCT (2) FIRM ENERGY:**

5.1 POINT OF DELIVERY:

5.2 RATE: \$XX.XX/MWH

5.3 AVAILABLE QUANTITIES:

5.4 TERM:

8. **OPTIONAL DELIVERY POINT:**

SAMPLE

Exhibit A
Contract No.

9. **INVOICE SUBMISSION INFORMATION:**

Western Area Power Administration
Attn:

Overnight Delivery:
Western Area Power Administration
Attn:

10. **SCHEDULING POINT OF CONTACT (POC) INFORMATION:**

Western Area Power Administration
Attn:

11. This Exhibit A to Contract No. _____ may be modified in accordance with Section 10
of the Contract.

SAMPLE