



United States
Department of Energy

WESTERN AREA
POWER ADMINISTRATION

Desert Southwest
Regional Office

IMPLEMENTATION AGREEMENT

**CONTRACT NO. 95-PAO-10616
AS AMENDED AND RESTATED**

BETWEEN

**UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Desert Southwest Customer Service Region
Boulder Canyon Project**

AND

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

AND

**BOULDER CANYON PROJECT
ELECTRIC SERVICE CONTRACTORS**

**BOULDER CANYON PROJECT
IMPLEMENTATION AGREEMENT
AS AMENDED AND RESTATED**

**Between
The United States,
acting through
The Western Area Power Administration, Department of Energy
and
The Bureau of Reclamation, Department of the Interior,
and the following parties:
Appendix G - Electric Service Contractors**

Table of Contents

<u>Section</u>	<u>Title</u>	<u>Page No.</u>
1.	Parties	1
2.	Explanatory Recital.....	2
3.	Original Agreement Amended and Restated by Amendment.....	3
4.	Term of Agreement Amendment	3
5.	Definition	3
6.	Relationship to other Contracts	7
7.	Replacements and Repayable Advances	8
8.	Visitor Facilities.....	13
9.	Multiple Project Benefits Costs	14
10.	Coordinating Committee, Engineering & Operating Committee and Technical Review Committee	14
11.	Coordinating Committee.....	14
12.	Engineering & Operating Committee and Technical Review Committee.....	18
13.	Billing and Payment.....	26
14.	Working Capital.....	26
15.	Audits	27
16.	Principal Payments.....	31
17.	Annual Rate Adjustments	31
18.	Regulations	31
19.	Entire Agreement.....	31
20.	Notice	32
21.	Dispute Resolution.....	32
22.	Relationship of Parties	32
23.	Modification and Waiver	33
24.	Effect of Section Headings	33
25.	Referenced Appendices.....	33
26.	Successor or Assignee.....	33
27.	Execution by Counterpart	34
28.	Authority to Execute	34
29.	Signature	35
Appendix A	Calculations for Replacement Capital Advances and Repayable Advances	
Appendix B	Committee Representatives	
Appendix C	Ten Year Operating Plan	
Appendix D	Working Capital Calculation	
Appendix E	Audit Scope of Work	
Appendix F	Contingent Capacity, Firm Energy, and BCP Percentages	
Appendix G	Electric Service Contractors	

BOULDER CANYON PROJECT IMPLEMENTATION AGREEMENT

1. **PARTIES**: The Parties to this Amended and Restated Agreement (Amendment) are the United States of America, acting by and through the Administrator, the Western Area Power Administration (Western) Department of Energy, represented by the officer executing this Amendment or a duly appointed successor, and acting by and through the Commissioner, Bureau of Reclamation (Reclamation) Department of the Interior, represented by the Regional Director, Lower Colorado Region or duly appointed successor; and the entities specified in Appendix G, that have a fully executed contract with Western for electric service. Such entities may be referred to individually as Party or collectively as Parties.
2. **EXPLANATORY RECITALS**: This Amendment is made with reference to the following facts, among others:
 - 2.1 Pursuant to Legislation, Western entered into an Electric Service Contract (Contract) with each Schedule A, and Schedule B, Contractors for the sale of contingent capacity and energy from the Boulder Canyon Project (BCP), for the period June 1, 1987 to September 30, 2017, with Reclamation a concurring signatory to such Contract insofar as its responsibilities are involved. Western has entered into Contracts with each Contractor for the sale of contingent capacity and energy from the Hoover Powerplant, for the period October 1, 2017 to September 30, 2067, with Reclamation a concurring signatory to such Contract insofar as it responsibilities are involved.

- 2.2 Reclamation and Western recognize each agency has responsibilities to ensure the BCP's plans, programs, costs, and revenues are managed in an efficient manner. The power output of the Hoover Powerplant will be delivered to the Contractors at the lowest possible cost consistent with applicable laws, legislation, statutes, regulations and sound business principles.
- 2.3 Reclamation has the responsibility and authority for the operation and maintenance of the BCP and Western has the responsibility and authority for the operation and maintenance of the Federal transmission system including the delivery point(s) at Mead Substation and administration of the Contracts including, but not limited to, the establishment of the Annual Revenue Requirement and rates for the sale of Contingent capacity and energy from the Hoover Powerplant.
- 2.4 The original BCP Implementation Agreement (Agreement) was effective as of February 17, 1995. This Amendment is pursuant to the HPAA of 2011 and assists with clarification of the BCP Contracts effective October 1, 2017.
- 2.5 The Parties have established a forum for the exchange of information and viewpoints regarding Contract administration, including the criteria, policies, and procedures by which the Hoover Powerplant will be operated and maintained in accordance with Reclamation's, practices and standards, and other regulatory requirements or standards.
- 2.6 In March 2014 the Hoover Contractors paid the remaining principal and interest due for the BCP Visitor Facilities and air slot loans to the United States Treasury.

- 2.7 The applicable resolutions passed by the Engineering & Operating Committee and documented in the original Agreement shall be retained in the Amendment.
- 2.8 The original Agreement originated under Contracts in effect from June 1, 1987 to September 30, 2017. The Parties desire to enter into this Amendment pursuant to the Electric Service Contracts and the Hoover Power Allocation Act of 2011.
3. **ORIGINAL AGREEMENT AMENDED AND RESTATED:** Now therefore, in consideration of the above recitals, the mutual covenants, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree, this Amendment amends and restates the Agreement dated February 17, 1995, in its entirety, with exception of the resolutions.
4. **TERM OF AGREEMENT AMENDMENT:** This Amendment shall become effective on October 1, 2017, and shall remain in effect until midnight, Mountain Standard Time, September 30, 2067.
5. **DEFINITIONS:** Terms, when initially capitalized and used herein and in the Appendices attached hereto, whether in singular or plural, shall have the meaning specified below or in section 5 of the BCP Contract. Where a term is defined in both documents, the definition in this Amendment shall control interpretations within this Amendment only.
- 5.1. Agency Instruction or Agency Order - Written policies and procedures which are agency-wide, duly adopted by Western or Reclamation, executed by either the Administrator or the Commissioner or their designee, including but not limited to, Reclamation Instructions, Department of Energy Orders, Western Orders or Western Guidelines.

- 5.2. Amendment - This Boulder Canyon Project Implementation Agreement and Appendices A through G attached hereto, as amended and restated from time to time by agreement of the Parties.
- 5.3. Annual Revenue Requirement - The estimated BCP expenses for the Rate Year less any carryover of funds from a prior Fiscal Year and revenues from other sources.
- 5.4. Boulder Canyon Project (BCP) - all work authorized by the Boulder Canyon Project Act, the Hoover Power Plant Act of 1984, the Hoover Power Allocation Act of 2011 and any future additions authorized by Congress, to be constructed and owned by the United States, but exclusive of the main canal and appurtenances authorized by the Boulder Canyon Project Act, known as the All-American Canal.
- 5.5. BCP Legislation – Legislation including, but not limited to, The Boulder Canyon Project Act, 45 Stat. 1057, the Boulder Canyon Project Adjustment Act, 54 Stat. 774, the Hoover Power Plant Act of 1984, 98 Stat. 1333 and Hoover Power Allocation Act of 2011.
- 5.6. Colorado River Dam Fund (Dam Fund) - The special fund in the United States Treasury established by Section 2(a) of the Boulder Canyon Project Act and available for carrying out the provisions of said Act, the Boulder Canyon Project Adjustment Act, the Hoover Power Plant Act of 1984 and the Hoover Power Allocation Act of 2011.
- 5.7. Contractor – The Party or Parties specified in Appendix G that have a fully executed contract with Western for electric service.
- 5.8. Contract(s) - Each and all of the Boulder Canyon Project Electric Service Contracts between each Contractor and Western, with the concurrence of Reclamation.

- 5.9. Coordinating Committee - The Coordinating Committee established pursuant to section 11 hereof.
- 5.10. Coordinating Committee Member - Each Party's representative on the Coordinating Committee, pursuant to subsection 11.2 and Appendix B hereof.
- 5.11. Discretionary Items - Plans, programs, and other decisions related to operations, maintenance, replacements, betterments, and additions which are justified on some basis other than (i) operating and maintaining the physical facilities of the BCP in good operating condition, normal wear and tear, (ii) providing for the repayment of the BCP's obligations to the United States Treasury, or (iii) applicable laws, legislations, statutes, or regulations. Incidental expenses for preliminary evaluation are not considered discretionary.
- 5.12. Engineering and Operating Committee (E&OC) - The Engineering and Operating Committee established pursuant to section 12 hereof.
- 5.13. E&OC Member - Each Party's representative on the E&OC, pursuant to paragraph 12.3.1 and Appendix B hereof.
- 5.14. Energy Deemed Delivered - The amount of energy scheduled, delivered, metered, and calculated to be delivered to each Contractor, including Motoring Losses (M_L) and Unloaded Synchronized Generation Losses (S_L) as defined in Exhibit F to the Contract, all determined in accordance with the metering and scheduling instructions developed and agreed upon pursuant to paragraph 6.11.2 of the BCP Contract. Such energy amount shall exclude energy purchased by Western, at the request of a Contractor, to meet that Contractor's deficiency in Firm Energy pursuant to subsection 6.8 of the BCP Contract.

- 5.15. Firm Energy: - Energy obligated from Hoover Powerplant pursuant to Sections 105 (a) (1) (A), 105 (a) (1) (B), and 105 (a) (2), as established by the Hoover Power Allocation Act of 2011 and the Conformed Criteria.
- 5.16. Fiscal Year: - The twelve (12) month period so designated by Federal law. Until changed by Federal law, Fiscal Year means the period commencing October 1 of each year, immediately after midnight of September 30, and ending at midnight of September 30 of the following year.
- 5.17. Hoover Powerplant: - The powerplant at Hoover Dam, consisting of seventeen (17) main generating units and appurtenant facilities.
- 5.18. PRS - The Power Repayment Study used by Western to calculate the Annual Revenue Requirement and the capacity and energy rates for the BCP.
- 5.19. Rate Year - The next Fiscal Year for which the Annual Revenue Requirement is forecast for annual rate determination purposes in the PRS.
- 5.20. Repayable Advances -The portion of the Replacement Capital Advances to be collected from Schedule D Contractors, and paid to Contractors in accordance with subsection 7.3 hereof.
- 5.21. Replacement Capital Advances - The annual value calculated pursuant to subsection 7.2 and Appendix A hereof for the purpose of determining Repayable Advances.
- 5.22. Schedule D Contractor - A new allottee, which enters into an electric service contract with Western pursuant to Hoover Power Allocation Act of 2011 and the Conformed Criteria.
- 5.23. Ten-Year Operating Plan - The product of the planning process pursuant to section 12 hereof.

- 5.24. Technical Review Committee (TRC) – A permanent subcommittee established pursuant to section 12 hereof.
- 5.25. Technical Review Committee Member - Each Party's representative on the TRC, pursuant to subparagraph 12.6.3.1 and Appendix B hereof.
- 5.26. Treasury - The United States Treasury.
- 5.27. Visitor Facilities - The facilities that contribute to the safety, education, and quality of recreation and tourism opportunities for all visitors. The facilities include, but are not limited to, the historic exhibit building, the multi-story parking structure, tour galleries, visitor tour center, exhibits, and viewing platform at the BCP.
- 5.28. Visitor Related Revenues – Revenues collected by Reclamation relating to fees established by Reclamation for public use of the Visitor Facilities including, but not limited to, fees for parking, entrance, tours and exhibits, and other visitor related revenues including, but not limited to sales of photographs and memorabilia.
- 5.29. Working Capital - The unobligated cash balance in the Colorado River Dam Fund for the purposes of avoiding the deferral, within a Fiscal Year, for work necessary to maintain the safe operation of the BCP and to meet required obligations pursuant to section 14 hereof.
- 5.30. 10 CFR Part 904 - "General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project" promulgated by Western, as such regulations may be amended and supplemented from time to time.
- 5.31. 43 CFR Part 431 - General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada" promulgated by Reclamation, as such regulations may be amended and supplemented from time to time.

6. **RELATIONSHIP TO OTHER CONTRACTS:** The individual BCP Electric Service Contract and this Amendment, shall be interpreted, and implemented by the Parties to fulfill and discharge the meaning and intent. The financial obligations incurred under this Amendment, including but not limited to sections 7, 13, 14 and 15 hereof, shall remain a part of the Amendment until all such obligations hereunder have been performed in full.

7. **REPLACEMENTS AND REPAYABLE ADVANCES:**

7.1 **Appropriations:** Reclamation may request appropriations each Fiscal Year to cover all or some portion of the total cost of replacements required for the BCP pursuant to section 5 of the Boulder Canyon Project Adjustment Act. It is recognized that budget priorities or constraints may prevent Reclamation from requesting or obtaining such appropriations. To the extent that Reclamation receives appropriated funds for BCP replacements, those replacements that have received appropriated funds shall be amortized and shall not be expensed.

7.2 **Replacement Capital Advances:**

7.2.1 In any Fiscal Year during the term of the Contract in which the amounts required for replacements on the BCP are not funded by appropriations from the Treasury, the excess may be expensed. ninety-six (96) percent of the sum of the amounts so expensed, together with interest during construction on those expenditures which are for replacement items not placed in service in the year such expenditures are made, shall be Replacement Capital Advances. The remaining four (4) percent of replacement expenditures shall not be included in the Replacement Capital Advances calculation since some small amount of annual

replacement expenditures has historically been expensed due to the low dollar value or short economic life of such replacements.

7.2.2 Reclamation agrees that moderating the rate impacts of year-to-year changes in operation, maintenance and replacement expenses is a relevant criterion for scheduling operation, maintenance and replacements in accordance with the Ten-Year Operating Plan and agrees to manage such expenditures over the remaining balance of the Contract term with the objective of avoiding excessive or precipitous annual increases in operation, maintenance and replacement expenses. Such commitment notwithstanding, Reclamation shall schedule operation, maintenance and replacements as necessary for the safe and reliable operation of the BCP.

7.3 Repayable Advances: To determine the Repayable Advances, Western shall, in consultation with Reclamation and the Contractors, annually calculate the amount of the Replacement Capital Advances made by the Contractors in accordance with the following procedure. Such calculations shall be completed by the end of the second month following the end of each Fiscal Year. The calculations shall show:

- (a) the annual and cumulative Replacement Capital Advances made each Fiscal Year by all Contractors from October 1, 2017, containing the information reflected in the formats, set forth in Tables 1-7 listed in Appendix A;
- (b) the capital (principal) which the Treasury would have recovered annually and cumulatively each Fiscal Year from October 1, 2017, if replacements funded with Replacement

Capital Advances had been funded by appropriations pursuant to Section 5 of the Boulder Canyon Project Adjustment Act and amortized on a levelized basis, set forth in Table 6 of Appendix A. For the calculation, the amortization repayment period shall be fifty (50) years, beginning with the first day of the Fiscal Year following the Fiscal Year in which the investment is placed in service, as provided in 10 CFR 904.5. Interest rates employed in the calculation shall be determined in accordance with Department of Energy Order RA 6120.2;

- (c) the annual and cumulative difference between items (a) and (b) above shall be in the format, set forth in Table 7 listed in Appendix A. The amount by which (a) exceeds (b) shall constitute the amount of Repayable Advances.

7.4 Recovery of Repayable Advances: The calculation of payment obligations and the reimbursements due related to Repayable Advances through September 30, 2017 shall be in accordance with this section.

7.4.1 The value of "P" shall be calculated pursuant to subsection 7.4.2 hereof for each Schedule D Contractor and each Increased Allocation Contractor with a payment obligation (such Increased Allocation Contractor is a Contractor which receives an increase in the percentage of total BCP capacity and energy after September 30, 2017 from the percentage referenced in Appendix F). The value of "R" shall be calculated pursuant to subsection 7.4.3 hereof for each Contractor with a reimbursement due. The cumulative

value of P less the cumulative value of R calculated for all Contractors and Schedule D Contractors shall be equal to zero (0).

7.4.2 Responsibility for payment of Repayable Advances shall be calculated for each Schedule D Contractor and each Increased Allocation Contractor in accordance with the following formula:

$P = 0.5 \times RA \times (C2 - C1) + 0.5 \times RA \times (E2 - E1)$ where:

P = The portion of the Repayable Advances to be paid by each Schedule D Contractor and each Increased Allocation Contractor as defined in 7.4.1.

RA = The total amount of Repayable Advances at September 30, 2017 as illustrated in Table 7 of Appendix A.

C1 = Each Increased Allocation Contractor's percentage of Contingent Capacity, pursuant to Appendix F hereof, or zero (0) for each Schedule D Contractor.

C2 = The ratio of the amount of total contingent capacity, in kilowatts, allocated to such Contractor to the total contingent capacity, in kilowatts, made available to all Contractors.

E1 = Each Increased Allocation Contractor's percentage of Firm Energy, pursuant to Appendix F hereof, or zero (0) for each Schedule D Contractor.

E2 = The ratio of the amount of total annual firm energy, in kilowatt-hours, allocated to such Contractor to the total annual firm energy, in kilowatt-hours, made available to Contractors.

7.4.3 Entitlement to reimbursement for Repayable Advances shall be allocated to each Decreased Allocation Contractor (such Decreased Allocation Contractor is a Contractor which either receives no allocation of Hoover Powerplant contingent capacity and energy

after September 30, 2017 or receives a decrease in the percentage of total Hoover Powerplant contingent capacity and energy after September 30, 2017 from the percentage pursuant to Appendix F hereof, and in accordance with the following formula:

$R = 0.5 \times RA \times (C1 - C2) + 0.5 \times RA \times (E1 - E2)$ where:

R = The portion of the Repayable Advances to be reimbursed to each Decreased Allocation Contractor.

RA = The total amount of Repayable Advances at September 30, 2017, based on calculations illustrated in Table 7 of Appendix A.

C1 = Each Decreased Allocation Contractor's percentage of Contingent Capacity pursuant to Appendix F hereof.

C2 = The ratio of the amount of total contingent capacity, in kilowatts, allocated to such Decreased Allocation Contractor to the total contingent capacity, in kilowatts, made available to Contractors.

E1 = Each Decreased Allocation Contractor's percentage of Firm Energy, pursuant to Appendix F hereof.

E2 = The amount of total annual firm energy, in kilowatt-hours, allocated to each Decreased Allocation Contractor, divided by the total annual firm energy, in kilowatt-hours, made available to Contractors.

7.4.4 Beginning in October 2017, Western, in addition to meeting all other revenue requirements of the BCP, shall establish enforceable obligations and collect a surcharge adequate to make reimbursement of Repayable Advances required by subsection 7.4.5.

7.4.5 Repayable Advances shall be reimbursed to eligible Contractors, pursuant to subsection 7.4.3 hereof, from the revenues collected by

Western pursuant to subsection 7.4.2 and 7.4.4 hereof.

Reimbursements shall be made in no more than five equal annual installments commencing on September 30, 2018 and each year thereafter, with interest from October 1, 2017. Such interest shall be compounded at the prime rate existing on September 30, 2017 as published in the Wall Street Journal, or such successor rate or publication which substitutes for the prime rate, less one (1) percent. The prime rate is the base rate on corporate loans posted by at least seventy-five (75) percent of the nation's thirty (30) largest banks.

- 7.5 Equal Treatment: If the United States shall implement funding of replacements on terms which are more favorable to a Contractor than the terms contained in this Amendment, the United States shall promptly make such terms available to all Contractors.
8. **VISITOR FACILITIES**: Reclamation will operate, maintain and make replacements to the Visitor Facilities as necessary in accordance with safety and security, regulatory requirements or standards, Reclamation practices and standards, and Recreation Facility Design Guidelines.
- 8.1. Western shall include the cost of operation, maintenance, and replacement of the Visitor Facilities and related services in the Annual Revenue Requirements used for establishing power rates and charges, and Reclamation will include the costs in the Ten-Year Operating Plan.
- 8.2. Reclamation will establish and maintain Visitor Related Revenues to cover or help offset the operation, maintenance, and replacement expenses associated with the Visitor Facilities.

- 8.3. The total amount of Visitor Related Revenues collected annually shall be deposited in the Colorado River Dam Fund to be available for expenditure therefrom only for purposes authorized by BCP Legislation. The revenue estimated to be available from Visitor Related Revenues shall be credited against the expenses estimated for the Annual Revenue Requirement.
 - 8.4. Reclamation shall provide the E&OC an estimate of Visitor Related Revenues to be used in the PRS.
 - 8.5. Reclamation shall at least annually review the Visitor Related Revenues at an E&OC and/or TRC meeting, including the existing fees, scheduled adjustments in fee levels, actual and projected visitation, and total revenues from Visitor Related Revenues.
 - 8.6. The actual Visitor Related Revenues collected each Fiscal Year shall be determined by Reclamation and reported to the Contractors, and the difference between estimated and actual Visitor Related Revenues shall be considered in determining the carryover balance calculated annually in the rate process.
9. **MULTI-PROJECT BENEFITS AND COSTS:** In coordination with the E&OC, Western developed and implemented, procedures for Multi-Project Benefits and Costs. The Multi-Project Written Procedures specify (i) the determination of multi-project benefits and costs, (ii) calculating the benefits and costs of integrated operation of the BCP with other Boulder City Area (now Western's Desert Southwest Region) Projects on the Colorado River, and (iii) allocating such benefits and costs among other projects In the event changes are proposed to these procedures, Western will provide the calculations, allocations, and analyses which justify proposed changes shall be made available in writing to

the E&OC for review prior to Western's inclusion of the multi-project benefits and costs in any PRS.

10. **COORDINATING COMMITTEE, E&OC AND TRC:** The Coordinating Committee and its functions, and also the role of the E&OC and TRC are defined as respectively set forth in sections 11 and 12 hereof.

11. **COORDINATING COMMITTEE:**

11.1. The Coordinating Committee is established to provide for the exchange of facts and information, and avoid disputes and disagreements under the Contracts regarding the criteria, policies, and procedures by which the Hoover PowerPlant will be operated, maintained, and kept in good repair so that capacity and energy charges will be at the lowest possible cost consistent with applicable laws, legislation, statutes, regulations, and sound business principles; and to facilitate implementation of 43 CFR Part 431.4, 431.6 and 431.8, and pertinent provisions of 10 CFR Part 904.

11.2. Membership of the Coordinating Committee shall consist of a representative, referenced in Appendix B, and reviewed annually by Western, Reclamation and Contractors that are a Party to this Amendment. Each Coordinating Committee Member shall have an alternate, who may act in the absence of the member. In designating a representative or alternate to act pursuant to this section 11, Western, Reclamation and each Contractor shall select a representative who is authorized to make decisions with regard to the issues to be decided by the Coordinating Committee. The representative of Reclamation shall be the Chairperson of the Coordinating Committee.

11.3. The Coordinating Committee shall meet from time to time, but not less often than annually, upon notice from the Chairperson, or representative,

to all Coordinating Committee Members, such notice to be provided at least fifteen (15) days prior to the scheduled date of such meeting. Meetings shall be held more often than annually at the call of the Chairperson upon the request of the Coordinating Committee Members of two (2) or more Parties, and the Chairperson shall establish a date for the meeting within thirty (30) days of receipt of such request. The request shall include the proposed agenda for the meeting. Each meeting notice shall include an agenda, a list of all action items to be addressed and the place and time of the meeting. Minutes shall be kept by Reclamation and copies thereof shall be transmitted to each Coordinating Committee Member. Minutes shall become final if no objections are communicated in writing, Email, or other electronic submissions to the Chairperson within thirty (30) days of receipt.

11.4. General Functions:

11.4.1. The Coordinating Committee may establish subcommittees and define their functions and responsibilities. The E&OC and TRC shall be permanent subcommittees of the Coordinating Committee, as defined in Section 12. The Coordinating Committee shall review issues referred to it by any of its members or by any subcommittee.

11.4.2. The Coordinating Committee shall instruct the E&OC and TRC to review, discuss, and make recommendations upon Reclamation and Western criteria, policies, and procedures, relating to the BCP.

11.4.3. The Coordinating Committee shall review, and exercise all reasonable efforts to agree on, the criteria, policies, and procedures developed by Reclamation and Western, and reviewed by the

E&OC and TRC, for the BCP and Federal electric delivery system operation, maintenance, and repair so that capacity and energy charges for the BCP shall be at the lowest possible cost consistent with applicable laws, legislation, statutes, regulations, and sound business principles.

11.4.4. Prior to expenditures for Discretionary Items being committed or incurred by Reclamation or Western, the Contractors' Coordinating Committee Members shall be provided the opportunity to review and communicate to Western and Reclamation the Contractors' views.

11.4.5. The Coordinating Committee shall attempt to expeditiously resolve (i) issues or disagreements arising within or from the actions of the Coordinating Committee or of any subcommittee, and (ii) issues or disagreements referred to it by any or all the Parties to this Amendment; Provided, however, that nothing herein is intended to restrict, modify, or waive any provision of section 18, Disputes of the Contract.

11.5. The Coordinating Committee will be deemed to have expressed and achieved agreement by majority vote of those Coordinating Committee Members who are in attendance, or who have provided their proxy in writing to the Chairperson of the Coordinating Committee with agreement of Reclamation and/or Western.

11.5.1. If the Coordinating Committee Members reach agreement on any issue before them, Western or Reclamation shall proceed to implement the agreed upon course of action if it does not violate

applicable laws, regulations, legislation, statutes, or practices and standards.

11.5.2. If the Coordinating Committee Members fail to reach agreement on any issue before them, the Coordinating Committee Member(s) shall have the opportunity to present a proposal(s) in writing for action to Reclamation and Western. Reclamation and Western shall agree on which agency has statutory authority to act on the proposal, and within thirty (30) days of receipt of such proposal, the responsible agency shall provide written response either accepting, or rejecting the proposal. A response accepting the proposal shall include a description of the steps to be taken and a schedule for implementation. A response rejecting the proposal shall provide an explanation of the reason for rejection.

11.6. Nothing in this Amendment shall authorize the Coordinating Committee to amend or modify this Amendment or the Contracts.

12. **ENGINEERING & OPERATING COMMITTEE (E&OC) AND TECHNICAL REVIEW COMMITTEE (TRC):**

12.1 The E&OC has been established as a permanent subcommittee of the Coordinating Committee, with the purposes, membership, functions, and responsibilities set forth in this section 12.

12.2 The purpose of the E&OC is to share information and ideas, and improve communications relating to the BCP's program items, operation, costs, and contracts; to facilitate the timely furnishing of data to the Contractors by Reclamation and Western; and to provide an avenue for timely Contractor input on any related issues of concern. The recommendations of the E&OC shall not limit or impair any Party's rights or obligations as

provided by their respective Contracts, or as provided by applicable laws, legislation, statutes, or regulations.

12.3 Composition and Meetings:

12.3.1 Membership of the E&OC shall consist of a representative, referenced in Appendix B reviewed annually, of Western, Reclamation and each Contractor that is a Party to this Amendment. The E&OC is intended to consist of persons with engineering, operating and other technical capabilities. Each E&OC Member shall have an alternate, who may act in the absence of the member. The representative of Reclamation shall be the Chairperson of the E&OC.

12.3.2 The E&OC shall meet from time to time, but not less often than quarterly, upon notice by the Chairperson to the E&OC Members. Meetings shall be held more often than quarterly at the call of the Chairperson upon request of any two (2) E&OC Members. The request shall include the reason for the meeting and a list of items to be discussed. The Chairperson shall establish a date for such meeting within ten (10) days of receipt of such request. The Chairperson shall provide notice of all E&OC meetings to each E&OC Member at least two (2) weeks prior to the scheduled meeting date. Each meeting notice shall include an agenda and a list of all action items to be addressed. Meeting attendees shall be limited to designated representatives or alternates, unless otherwise provided for by the Chairperson. Meetings shall be held in Reclamation's facilities in Boulder City, Nevada, unless otherwise designated in the meeting notice. Minutes shall be kept by

Reclamation and copies thereof shall be transmitted to all Parties and all E&OC Members. Minutes shall not become final until reviewed and approved by the E&OC Members present at a subsequent E&OC meeting.

12.3.3 All actions, recommendations, agreements, or determinations, taken by the E&OC, including the contrary view of any Party, shall be reduced to writing and shall be considered and addressed by Reclamation and Western in carrying out their responsibilities for the BCP.

12.4 General Functions:

12.4.1 The E&OC shall provide a liaison among Western, Reclamation and the Contractors with regard to engineering and operating matters, costs related to the BCP and the Ten-Year Operating Plan referred to in Appendix C.

12.4.2 The E&OC shall review the cost data submitted by Reclamation in performance of 43 CFR Part 431.5 and the power generation estimates prepared by Reclamation pursuant to 43 CFR Part 431.6. Reclamation shall meet with the E&OC and, to the extent permitted by applicable laws, legislation, statutes, regulation, Agency Instruction, or Agency Order, shall consider the views of the E&OC prior to Reclamation's formulation of a budget, and before Reclamation makes final determination of future cost projections for PRS purposes.

12.4.3 The E&OC shall review the revenue and cost data utilized by Western in its development of a PRS. Western shall meet with the E&OC and, to the extent permitted by applicable laws, legislation,

statutes, regulation, Agency Instruction, or Agency Order, shall consider the views of the E&OC prior to Western's formulation of a budget and before Western makes final determination of future cost projections for PRS purposes.

12.4.4 The E&OC shall review, discuss, and provide recommendations on quarterly or annual reports to be provided by Reclamation and Western covering the following topics related to the BCP:

- (a) Budgets and reports for operation, maintenance, replacements, betterments, and additions;
- (b) Planned outage schedules;
- (c) Annual projections of generation; and
- (d) Statistical and other reports of significant events.

12.4.5 The E&OC may also review, discuss, and provide recommendations on other topics related to the BCPs criteria, practices, procedures, or such other information that the Contractors may request including, but not limited to, the following:

- (a) Operations and maintenance;
- (b) Replacement, addition, and betterment forecasts and expenditures;
- (c) Environmental issues;
- (d) Inventories;
- (e) Determination of generation capacity and Energy Deemed Delivered;
- (f) Unit efficiency and availability;
- (g) Hydrologic methodology and projections;

- (h) Visitor Facilities, including Visitor Related Revenues;
- (i) Operating emergencies or curtailed operations;
- (j) Management of the Project, including the determination of the Working Capital; and
- (k) Multi-project benefits, costs, and allocations.

12.4.6 Western and Reclamation shall initiate and present to the E&OC, detailed descriptions and time lines of the processes and/or programs related to the BCP's budget formulation, annual revenue requirements and power rate determinations and implementation, criteria, policies, procedures and the Ten Year Operating Plan.

12.4.7 When recommendations of Contractors are directed to issues or concerns outside the scope of the Contracts, Western or Reclamation, as appropriate, shall forward such comments to the appropriate authorities.

12.4.8 The E&OC shall perform such other functions as directed in writing by the Coordinating Committee.

12.4.9 The E&OC will be deemed to have expressed and achieved agreement, relating to E&OC matters, by majority vote of those E&OC Members who are in attendance, or who have provided their proxy in writing to the Chairperson of the E&OC with agreement of Reclamation and/or Western.

12.5 In addition to the basic information which Reclamation is required to provide annually under 43 CFR Part 431, prior to each regularly scheduled quarterly meeting of the E&OC, Reclamation or Western, as applicable, will provide each E&OC Member with updated BCP data, if available, major work items status, Dam Fund status, planned outage schedules and

visitation information. Such data shall be in a format similar to the information presently being provided to the E&OC Members by Reclamation and/or Western as of the date of this Amendment. Upon request of any E&OC Member, items shall be added to the agenda for the next E&OC meeting. Reclamation and/or Western shall use its best efforts to present supporting documents and studies to the extent permitted by time, applicable laws, legislation, statutes, regulation, Agency Instruction, or Agency Order.

12.6 Technical Review Committee:

12.6.1 The TRC has been established as a permanent subcommittee of the Coordinating Committee.

12.6.2 The purpose of the TRC is to review, discuss and make recommendations regarding technical issues relating to planning, operations, maintenance and replacements. The recommendations of the TRC shall not limit or impair any Party's rights or obligations as provided by their respective Contracts, or as provided by applicable laws, legislation, statutes, or regulations.

12.6.3 Composition and Meetings:

12.6.3.1 Membership of the TRC shall consist of technical representatives, of Western, Reclamation and each Contractor or technical representative of the Contractor, who is a Party to this Amendment. The TRC is intended to consist of persons with engineering, operating or other technical capabilities. Each TRC member shall have an alternate, who may act in the absence of the member. The

representative of Reclamation shall be the Chairperson of the TRC.

12.6.3.2 The TRC shall meet annually in September, unless otherwise agreed to by the TRC, upon notice by the Chairperson to the TRC Members. The main purpose of the annual meeting is to present the BCP preliminary Ten Year Plan background and answer questions relating to the BCP preliminary Ten Year Plan. Meetings shall be held more often than annually at the call of the Chairperson upon request of any two (2) TRC Members. The request shall include the reason for the meeting and a list of items to be discussed. The Chairperson shall establish a date for such meeting within ten (10) days of receipt of such request. The Chairperson shall provide notice of all TRC meetings to each TRC Member at least two (2) weeks prior to the scheduled meeting date. Each meeting notice shall include an agenda and a list of all action items to be addressed. Meetings shall be held in Reclamation's facilities in Boulder City, Nevada, unless otherwise designated in the meeting notice. Minutes shall be kept by the Contractor members of the TRC and copies thereof shall be transmitted to all Parties and all E&OC Members.

12.6.3.3 The Contractor members of the TRC shall prepare a report of recommendations for the E&OC on the BCP preliminary Ten Year Plan.

12.7 Ten Year Planning Process:

12.7.1 Western and Reclamation, in coordination with the E&OC and the TRC shall conduct an annual planning process with the following purposes: to provide information to the Contractors of plans for the on-going operation of the BCP; to provide the Contractors with the opportunity to provide input into the operations of the Hoover Powerplant prior to the expenditures of significant funds on replacements, upgrades, betterments, and operation and maintenance items; to assure that the BCP is being operated as efficiently and effectively as possible; and to provide a mechanism to link the budget, Annual Revenue Requirement, rate and ten-year planning process. The product of the annual planning process will be the Ten Year Operating Plan. The Parties intend that the annual planning process be completed in advance of the budget, Annual Revenue Requirement development, and rate making process so that the E&OC and the TRC will have the ability to constructively comment during the preparation of the Ten Year Operating Plan.

12.7.2 Western and Reclamation shall take into consideration the projected costs, revenues, and generation contained in the most recent "Final" Ten Year Operating Plan for the BCP during the development of all budgetary documents, Annual Revenue Requirement, or rate analysis prepared by Western or Reclamation. If Western and Reclamation incorporate the projected costs, revenues, and generation contained in the most recent "Final" Ten Year Operating Plan for the BCP in a PRS used to support an Annual Revenue Requirement and rate adjustment, and if the

E&OC and TRC has agreed with the most recent "Final" Ten Year Operating Plan for the BCP; then a Contractor, shall not challenge, before the Deputy Secretary of Energy or Federal Energy Regulatory Commission, the projected costs, revenues and generation used in the PRS for that Rate Year that were obtained from the most recent "Final" Ten Year Operating Plan.

12.7.4 Appendix C shall serve as the guideline for the Ten Year Operating Plan. The Ten Year Operating Plan is a living document, the form of which may be modified and adjusted by Reclamation and Western, provided such modification and adjustments are presented to the E&OC for review and comments.

12.8 Administrative Matters:

12.8.1 Western and Reclamation shall use best efforts to utilize the most current and up-to-date information in developing the PRS. The data developed in accordance with 43 CFR 431.5 and Section 12.7 hereof, shall be used in the PRS, unless prior to the distribution of the PRS to the Contractors, other data is communicated to and reviewed with the Contractors.

12.8.2 Any unresolved issue or disagreement arising from the E&OC or TRC may be submitted by any E&OC or TRC Member to the Coordinating Committee for resolution.

13. **BILLING AND PAYMENT:** As per section 7 of the BCP Contract, Western shall determine, submit, and collect for all billing associated with the Contract and this Amendment.

14. **WORKING CAPITAL:** The Parties hereby define the Working Capital to be determined and managed in accordance with the following:

- 14.1 The Working Capital shall be used only: (i) to bridge the time delay between the date of billing by Western for capacity and energy sales and the date of receipt by Reclamation of the resulting revenues; and (ii) to assure that sufficient funds are available during each Fiscal Year to avoid deferral within a Fiscal Year, for work necessary to maintain the safe operation of the BCP and to meet required obligations. The Working Capital is available only to cover expenditures which are for those BCP uses which are included in the authorized budget of Reclamation or Western.
- 14.2 Pursuant to Appendix D Reclamation, by February 1st of each, will prepare a Monthly Obligations and Funds Flow Analysis.
- 14.3 If the amount of Working Capital needs to be adjusted based on the Monthly Obligations and Funds Flow Analysis, Reclamation and Western will work with the E&OC and the Coordinating Committee pursuant to Appendix D to determine the adjustment and when it needs to take effect.
- 14.4 The Working Capital shall be returned to the Contractors in Fiscal Year 2068 based on their Contract percentage pursuant to Appendix F hereof.
15. **AUDITS:**
- Annual Chief Financial Officers (CFO) Audit: Western and Reclamation contract with an external CPA firm to perform an annual audit, inclusive of the BCP pursuant to the CFO Act of 1990 (Public Law 101-576). The audit is conducted according to generally accepted accounting principles and audit standards, and reviews Western's and Reclamation's records to ensure they are maintained in compliance with applicable standards, laws, legislation, regulations, and procedures and verifies that appropriate internal fiscal controls and procedures are in place. Such audits are

authorized pursuant to Section 23 of the BCP Contract. It is the intent of the Parties that only the audits provided for in this Amendment must follow the respective procedures addressed in this Amendment.15.1.

15.1 Conduct of Audits:

15.1.1 All recommendations from audits conducted pursuant to this Agreement shall be evaluated and reviewed by the E&OC, and those recommendations with which the E&OC Members unanimously agree shall be implemented by Western or Reclamation, as applicable. Through membership on the E&OC, Western or Reclamation may decline to implement any audit recommendation. With regard to those recommendations that cannot be fully implemented, written explanations will be provided to the E&OC for discussion, and such explanations shall specify those portions of the recommendations that cannot be implemented, and the reasons for non-implementation. Any E&OC Member may submit for consideration by the Coordinating Committee any audit recommendation which Western or Reclamation declines to implement, pursuant to Section 12.7.2 hereof.

15.1.2 All audits shall be conducted in accordance with the generally accepted accounting principles and other established standards or guidelines.

15.1.3 Audit reports produced as a result of audits of the BCP performed by one or more of the Contractors shall be made available to and reviewed with Reclamation and Western before the audit is

certified as final. Reclamation and Western shall receive copies of the final audit report.

15.2 Contractor Initial Audit:

15.2.1 The Contractors agree to have an independent initial audit of the Project performed by an independent auditor.

15.2.2 The initial audit of the Project will be conducted and concluded within nine (9) months of the effective date of this Agreement. The initial audit will cover the period beginning on June 1, 1987 and concluding with the most recently completed Fiscal Year.

15.2.3 Each Contractor shall pay its share of the cost of the initial audit which shall be determined in accordance with the following formula:

CS = AC x CP, where:

CS = each Contractor's share of the initial audit cost.

AC = the total cost of the initial audit.

CP = the Contractor's Project percentage pursuant to Appendix G hereof.

15.2.4 The Contractors shall provide Reclamation and Western advance written notice of intent to conduct the initial audit, the audit scope, and the proposed work plan. The information to be included in the audit scope shall be limited to that available, pursuant to section 24 of the Contract. Reclamation, Western, and the Contractors shall mutually agree upon the date on which the audit will commence, which date shall be no less than thirty (30) days and no more than ninety (90) days after such notice.

15.2.5 In addition to the requirements of this section, the initial audit shall be conducted in conformance with the minimum requirements identified in Appendix E attached hereto.

15.3 Joint Audits:

15.3.1. In addition to the conduct of an initial audit and annual CFO audits as provided herein, other audits may be performed by one (1) or more Contractors. If two (2) or more Contractors agree to conduct an audit (Joint Audit), then all Contractors shall be provided the opportunity to participate in the Joint Audit. All Joint Audits shall be performed at the sole expense of the Contractors participating therein. The auditor(s) shall have access for any purpose at all reasonable times to applicable portions of all books and records of the other Contractors, Reclamation, and Western relating to transactions associated with the Contract. Prior to commencement of the Joint Audit, the participating Contractors shall have agreed to the details of conducting the Joint Audit. Such details may include, but shall not be limited to:

- (a) the scope and work plan;
- (b) whether the audit is to be conducted by an independent auditor or an audit team of the Contractors;
- (c) the identity of the independent auditors and the estimated costs thereof, or the identity of the audit team and the basis for the audit team's estimated charges;
- (d) how the costs and expenses of the audit shall be allocated among, and paid by, the Contractors participating in the audit; and
- (e) distribution of the audit report.

15.3.2 The Contractors shall provide Reclamation and Western at least thirty (30) days advance written notice of intent to conduct a Joint Audit, the audit scope, and the proposed work plan. Reclamation, Western, and the Contractors shall mutually agree upon the date on

which the Joint Audit will commence, which shall be within ninety (90) days of such notice.

16. **PRINCIPAL PAYMENTS**: The Annual Revenue Requirement includes principal and interest currently due the Treasury. When sufficient funds are available to meet the requirements of the BCP in accordance with the Contracts, Reclamation may pay principal on a monthly basis, or in the early part of the Fiscal Year as a lump sum, rather than at the end of the year; Provided, however, the annual principal payments over the term of the Contracts shall not exceed the cumulative principal payments that would be made under a level amortization schedule. Reclamation shall report on the timing and amount of principal payments paid in the just-ended Fiscal Year at the first E&OC meeting of each Fiscal Year.
17. **ANNUAL RATE ADJUSTMENTS**: According to the schedule established pursuant to paragraph 12.4.6 hereof, Western shall present to Reclamation and the Contractors its analysis of the revenue that the then-effective BCP capacity and energy charges are expected to yield in the next Rate Year as compared to the Annual Revenue Requirements of the Rate Year. If such charges are expected to provide revenues that are greater or less than the Annual Revenue Requirement, Western shall propose a corrective BCP rate adjustment to take effect in the first Billing Period of the Rate Year.
18. **REGULATIONS**: From time to time additional or amendatory regulations may be promulgated as deemed necessary for the administration of the Boulder Canyon Project in accordance with applicable laws, legislation and statutes.
19. **ENTIRE AMENDMENT**: It is mutually understood and agreed that this Amendment represents the complete agreement of the Parties, and that no alteration or variation of the terms, conditions, covenants, and obligations of this

Amendment, except the appendices, shall be valid and binding unless made in writing and signed by the Parties hereto. The appendices shall be modified pursuant to section 25 hereof.

20. **NOTICE**: Any notice, demand, or electronic request required by this Amendment is to be in writing and shall be considered properly distributed when delivered in person, or sent by registered, certified or express mail, postage prepaid, or prepaid telegram addressed to each representative of the Coordinating Committee at the principal offices of the Party. The designation of the person to be notified may be changed at any time by similar notice. The names and mailing addresses of the representatives of the Coordinating Committee are listed in Appendix B hereof.
21. **DISPUTE RESOLUTION**: Any unresolved issues or any disputes arising out of this Amendment shall, at the written request of any Party, be subject to dispute resolution pursuant to section 18 of the BCP Contract. Any Party may intervene and participate in such dispute resolution.
22. **RELATIONSHIP OF PARTIES**: The covenants, obligations and liabilities of the Parties are intended to be several and not joint or collective, and nothing herein contained shall ever be construed to create an association, joint venture, trust or partnership of the Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities as herein provided. No Party shall be the agent of or have a right or power to bind any other Party or to waive any other Party's rights without such other Party's express written consent. Default in the performance of this Amendment, or lack of capacity to enter into this Amendment, on the part of any Contractor shall not affect the performance of this Amendment and the enforceability thereof between the United States and each of the other Contractors.

23. **MODIFICATION AND WAIVER:** Any modification, extension or waiver by the United States, of any of the terms, provisions or requirements of this Amendment, or any Project regulation or contract, for the benefit of one or more Contractors or their resale customers, shall not be denied to any other Contractor. Any waiver at any time by any Party hereto of its rights with respect to a default or any other matter arising under or in connection with this Amendment shall not be deemed to be a waiver with respect to any subsequent default or matter.
24. **EFFECT OF SECTION HEADINGS:** Other than definitions, section headings appearing in this Amendment are inserted for convenience only, and shall not be considered as interpretation of text.
25. **REFERENCED APPENDICES:** Appendices A through G are incorporated by reference herein and shall be considered a part of this Amendment. Appendices A, B, C, and D, may be updated from time to time by written consent of the representatives of the E&OC, which consent shall not unreasonably be withheld. However, the methodology in Appendices A may only be amended or restated by agreement of the Parties. Appendix B may be amended or restated at any time by each of the committee representative, by giving notice to Western, Reclamation and each Contractor of such change in its representative(s). Appendix F may not be amended or restated. Appendix G may be amended or restated by Western.
26. **SUCCESSOR OR ASSIGNEE:** Any successor or assignee of the rights of any Party, whether by voluntary transfer, judicial or foreclosure sale or otherwise, shall be subject to all the provisions and conditions of this Agreement to the same extent as though such successor or assignee were the original Party under this Amendment, and the execution of a mortgage or trust deed, or judicial or foreclosure sale made thereunder, shall not be deemed voluntary transfer within the meaning of this Section. No assignment or transfer of any rights under this

Amendment shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of this Agreement.

27. **EXECUTION BY COUNTERPART**: This Amendment may be executed in any number of counterparts and, upon execution and delivery by each Party, the executed and delivered counterparts together shall have the same force and effect as an original instrument as if all Parties had signed the same instrument. Any signature page of this Amendment may be detached by any counterpart of this Amendment without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Amendment identical in form hereto, by having attached to it one or more signature pages.
28. **AUTHORITY TO EXECUTE**: Each individual signing this Amendment certifies that the Party represented has duly authorized such individual to execute this Amendment that binds and obligates the Party.

[Remainder of Page Intentionally Blank]

Note: Signature pages for all Contractors will be included upon distribution of final draft.

The Parties agree this Amendment to Contract No. XX-DSR-XXXXXX has been executed by duly authorized representatives of the Contractor, Western, and Reclamation and is to be effective as of ____ day of _____, XXXX.

THE UNITED STATES OF AMERICA
WESTERN AREA POWER ADMINISTRATION

Attest:

By: _____

By: _____

Senior Vice President and
Desert Southwest Regional Manager

Date: _____

and

THE UNITED STATES OF AMERICA
BUREAU OF RECLAMATION

Attest:

By: _____

By: _____

Regional Director

Date: _____

Approved as to Form:

By: _____

Attorney Name
Attorney

Attest:

CONTRACTOR NAME

By: _____

By: _____

Date: _____