

MEMORANDUM OF UNDERSTANDING

No. X-TIP-X

AMONG

[PROPONENT]

AND

THE UNITED STATES OF AMERICA

***DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
TRANSMISSION INFRASTRUCTURE PROGRAM***

ON THE

[PROJECT NAME]

Memorandum of Understanding

[Project Name]

[DATE]

Recitals

Whereas, Section 402 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)(Recovery Act), as codified in Section 301 of the Hoover Power Plant Act of 1984 (Public Law 98-381)(Hoover Act), provides the Administrator of the Western Area Power Administration (WAPA) with discretion to borrow up to \$3.25 billion from the United States Treasury for purposes of constructing, financing, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines and related facilities with at least one terminus in WAPA’s service territory that will deliver or facilitate the delivery of power generated by clean energy resources constructed or reasonably expected to be constructed after the date of enactment of Section 402 of the Recovery Act; and

Whereas, WAPA has undertaken public processes since the enactment of the Recovery Act to: (1) develop practices and policies for a Transmission Infrastructure Program (TIP) designed to implement the authority granted WAPA by the Recovery Act; and (2) solicit project proposals from entities interested in developing potential transmission projects under the aforementioned authority; and

Whereas, [Proponent] submitted a project proposal to WAPA on [DATE] requesting project financial assistance for the proposed [PROJECT] and WAPA, having reviewed and evaluated [PROPONENT’S] project proposal, determined that the representations made in the project

proposal met the statutory prerequisites set forth in the Hoover Act and TIP's evaluation criteria;
and

Whereas, [LEGAL DESCRIPTION OF PROPONENT];

Now, therefore, it is hereby agreed that WAPA and [PROPONENT] (also referred to individually as "Party" and jointly as "Parties") enter into this MOU to enable WAPA to continue its review and evaluation of the Project by reviewing the Project Business Plan Proposal for purposes of determining whether or not to enter into a subsequent agreement(s) with [PROPONENT] to engage in specific Project development work.

Statements of Understanding

1. **General Terms:**

1.1 WAPA is proceeding with the review and evaluation of the Project in accordance with the requirements set forth in Section 301 of the Hoover Act, the evaluation criteria developed as part of the TIP public process set forth in an April 7, 2014 *Federal Register* notice (79 FR 19065), and other relevant TIP policies and procedures.

1.2 If WAPA agrees to participate in the Project beyond the review and evaluation phase contemplated under this MOU, the cost associated with developing additional agreements necessary to move the Project forward and WAPA's participation in that process will be exclusively borne by [PROPONENT]. [PROPONENT] and WAPA will collectively determine the scope of WAPA's participation.

1.3 The Parties acknowledge and agree that nothing in this MOU requires the Parties to develop the Project or enter into any subsequent agreements, transactions or arrangements whereby WAPA commits to providing any financing whatsoever to develop the Project or move it forward in any manner, or [PROPONENT] commits to providing funding for the Project beyond the charge assessed in Section 5.1 of this MOU.

2. **Project Definition and Scope:**

2.1 [PROPONENT's] proposed Project is [PROJECT DESCRIPTION].

3. **Schedule:**

3.1 To ensure WAPA's continuing review and evaluation of the Project Business Plan Proposal can be completed in a timely manner, the Parties agree to use best efforts to establish a mutually agreeable time schedule. [PROPONENT] has submitted a preliminary project schedule, which schedule is attached hereto as Exhibit A. Accordingly, [PROPONENT] agrees to provide WAPA with funding pursuant to Section 5 of this MOU and all necessary information needed based on the Business Plan Proposal template provided by WAPA and the U.S. Department of Energy *Federal Register* notice (79 FR 19065) dated April 7, 2014.

3.2 If WAPA determines the Project is suitable for further development and [PROPONENT] desires to proceed, the Parties agree to negotiate in good faith to develop and execute subsequent Project agreements in a timely manner, as agreed by mutual consent of the Parties. If the Parties cannot develop the necessary agreements in a timely manner, or having developed such agreements

[PROPONENT] chooses not to execute them, WAPA may, at its discretion, discontinue its Project development efforts.

4. **Subsequent Agreements:**

4.1 If the Parties determine that the Project is suitable for further development, the Parties, subject to their sole discretion, may agree to enter into negotiations to produce one or more agreements that, among other things, may address: (1) a funding mechanism (e.g., an Advance Funding Agreement) to facilitate development of the Project, (2) a National Environmental Policy Act (NEPA) Project plan; and (3) specific developmental support and technical services to be provided by WAPA.

4.2 If the Parties negotiate subsequent agreements pursuant to Section 3.2 and this Section 4, the Parties may seek to include in such subsequent agreements principle terms related to: WAPA's potential ownership of Project real and/or personal property, facilities and capacity (if any); a Project governance structure; participant responsibilities; operational matters; financial considerations to include the preparation of a Project budget; and other major Project-related issues.

4.3 Any such subsequent agreements developed in accordance with Section 3.2 and this Section 4 shall incorporate the intent of this MOU except as otherwise agreed by the Parties. All subsequent agreements are necessarily subject to approval by WAPA and the U.S. Department of Energy.

5. **Funding:**

5.1 [PROPONENT] agrees that it will pay for any and all Project-related work performed by WAPA or a WAPA contractor in accordance with the terms of this

MOU. [PROPONENT] understands that because WAPA's continued assistance with Project-related work is contingent upon having adequate funds, if there are insufficient funds to cover WAPA's expenses related to the evaluation process WAPA will promptly inform [PROPONENT] of the insufficiency and request additional funding.

5.2 [PROPONENT] understands that WAPA will not review or evaluate the Project Business Plan Proposal unless adequate funds have been received to cover WAPA's expenses, and expressly acknowledges that all funds used by WAPA to review and evaluate the Project Business Plan Proposal are not reimbursable, except as provided in section 5.3; however, WAPA will periodically provide [PROPONENT] with an accounting of all expenditures related to its evaluation of [PROPONENT's] Project Business Plan Proposal. WAPA agrees to complete its review expeditiously while keeping [PROPONENT] apprised of its progress.

5.3 Upon notice of either Party not to participate in the Project (pursuant to Section 8 of this MOU), WAPA shall return all unused funds provided by [PROPONENT]. On the other hand, if the Parties choose to participate in development of the Project and unused funds remain after WAPA completes its review and evaluation of the Project Business Plan Proposal, [PROPONENT] may, at its discretion, request that WAPA return the unused funds or apply the funds toward development work that WAPA will perform on the Project.

6. **Confidentiality of Sensitive Information:**

6.1 Each Party shall maintain the confidentiality of all the documents, data, and any other information provided to it by the other Party (or by the other Party's affiliates and/ or the other Party's or such affiliates' respective representatives) that contains

confidential, proprietary, or market sensitive information (Confidential Information), whether provided orally, in writing or in electronic format. Wherever possible, each Party shall conspicuously mark any documents, data, and information that it considers confidential, proprietary or market sensitive with the phrase “Confidential, proprietary or market sensitive information.”

6.2 WAPA shall protect Confidential Information from disclosure to others using the same degree of care used to protect its own Confidential Information, but in any case using no less than a reasonable degree of care. WAPA shall handle disclosure of any documents or information provided by [PROPONENT] in accordance with applicable laws and regulations including the Freedom of Information Act (5 U.S.C. § 552, 10 CFR Part 1004). As part of processing any Freedom of Information Act or similar request for access to or disclosure of documents or information submitted by [PROPONENT], WAPA shall consult with [PROPONENT]. [PROPONENT] shall review and identify to WAPA documents or portions of documents it considers exempt from disclosure.

6.3 Neither Party is required to maintain the confidentiality of Confidential Information provided to it by the other Party (or by the other Party's affiliates and/or the other Party's or such affiliates' respective representatives) if the receiving party is required by law to disclose such information, or the information is already in the public domain by means other than release by the receiving party; provided, however that promptly after such Party learns of the disclosure requirement and prior to making such disclosure, such Party shall notify the other Party of the requirement and terms thereof. The affected Party may, at its sole discretion and own cost, direct any challenge to or defense against the disclosure requirement and the disclosing Party shall cooperate, consistent with applicable law, with the affected Party to obtain proprietary or confidential treatment of the information prior to any such disclosure

and shall limit the scope of such disclosure to such information as is required by law to be so disclosed.

7. **Public Statements:**

The Parties agree (i) that they will not make any public statement regarding the arrangements between them without the prior written consent of the other Party, such consent not to be unreasonably conditioned, delayed or withheld and (ii) to act jointly and with mutual agreement on all Project-related news releases and public statements unless, in the case of each of clause (i) and (ii) a Party is compelled to make such statements by judicial or administrative process or under the requirement of law. Notwithstanding the foregoing or Section 6, [PROPONENT] may disclose the Confidential Information or the arrangements between the Parties, as limited by the terms provided within this MOU, to its affiliates, and its and their respective officers, directors, managers, employees, agents, consultants, advisors, agents, or representatives on a need-to-know basis, or financial investors (including existing and potential capital sources) and other business partners who are bound by confidentiality agreements preventing further disclosure of such confidential information or to those that disclosure is required for regulatory purposes.

8. **Termination of this MOU and Liability Hereunder:**

Either Party may terminate this MOU for any reason or no reason at all provided that the terminating Party gives at least fifteen (15) business days advance notice to the other Party. For clarification, the terminating Party shall not be liable to the other Party for any detrimental reliance or lost opportunity costs resulting from the termination of this MOU.

9. **No Implied Approval of Project by WAPA:**

The Parties expressly understand and agree that after WAPA's review and evaluation of the Project Business Plan Proposal, WAPA may decide to participate in the Project by executing subsequent agreements leading to the performance of preliminary development work, or it may decide not to participate in the Project at all. [PROPONENT] expressly acknowledges that it shall have no cause of action against WAPA whatsoever due to its decision not to participate in the Project.

10. **Governing Law:**

The Parties agree that this MOU will be governed by Federal law to the extent it is applicable; otherwise the laws of the State of [X] would govern, without giving effect to any conflict of laws rules.

11. **Entire Agreement; Amendment:**

This MOU is the complete agreement of the Parties concerning the subject matter hereof and supersedes any prior agreements (whether oral, electronic or written) regarding the same subject matter. This MOU may not be amended or in any manner modified except in writing signed by the Parties.

12. **Separateness:**

If any provision of this MOU is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

13. **Signature Clause:**

The signatories to this MOU represent that they are authorized to enter into this MOU on behalf of the Party for whom they sign. This MOU, which may be executed in counterparts, shall be effective as of the date of the signatures below, or, if the dates are different, then as of the later date.

[PROPONENT]

By: _____

Name:

Title:

Date: _____

**WESTERN AREA POWER
ADMINISTRATION**

By: _____

Name: Tracey A. LeBeau

Title: Senior Vice President and Transmission
Infrastructure Program Manager

Date: _____

Exhibit A