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**United States  
Department of Energy**

**WESTERN AREA  
POWER ADMINISTRATION**

**Desert Southwest  
Regional Office**

**AGREEMENT NO. XX-DSR-XXX**

**BETWEEN**

**UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
Desert Southwest Customer Service Region  
Parker-Davis Project  
Pacific Northwest-Pacific Southwest Intertie Project**

**AND**

**CONTRACTORS**

**FOR**

**JOINT PLANNING AGREEMENT**

**AGREEMENT NO. XX-DSR-XXX**

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WESTERN AREA POWER ADMINISTRATION  
Desert Southwest Customer Service Region  
Parker-Davis Project  
Pacific Northwest-Pacific Southwest Intertie Project**

**AND**

**CONTRACTORS**

**FOR**

**JOINT PLANNING AGREEMENT**

1. **PREAMBLE:** This Joint Planning Agreement No. XX-DSR-XXXXX (Agreement) made this \_\_\_\_ day of \_\_\_\_\_, 2018, between the United States of America, Department of Energy, acting by and through the Administrator, WESTERN AREA POWER ADMINISTRATION, hereinafter called WAPA, represented by the officer executing this Agreement or a duly appointed successor; and the CONTRACTOR(S) or a duly authorized representative, hereinafter called Contractor(s), its successors and assignees; each sometimes individually called Party, and collectively called Parties.
2. **EXPLANATORY RECITALS:**
  - 2.1. The Joint Planning Agreement Principles Contract No. 95-DSR-10534 (JPA Principles) became effective on December 1, 1995, and shall remain in effect until superseded by this Agreement.
  - 2.2. WAPA and certain Parker-Davis Project (P-DP) and the Pacific-Northwest Pacific-Southwest Intertie Project (Intertie) customers have executed the

Memorandum of Understanding Prepayment Funding Process for Construction,  
WAPA Agreement No. 10-DSR-12175 (MOU) dated September 29, 2010.

- 2.3. WAPA receives payment in advance (Prepayments) for Long-Term Firm Point-to-Point transmission service on the DSW Transmission Systems. Prepayments provide funds for Construction Projects on the DSW Transmission Systems, and it is mutually beneficial to the Parties to continue to utilize Prepayments for this purpose.
- 2.4. Certain P-DP and Intertie customers requested that WAPA replace the MOU with this Agreement. Exhibit A, attached hereto, documents current and future customer input processes related to Prepayments.
- 2.5. This Agreement applies to the DSW Transmission Systems as that term is defined in Attachment No. 1, attached hereto.
- 2.6. The Parties have a vested interest in WAPA's responsibility to manage and invest in the DSW Transmission Systems to maintain safe, secure, and reliable transmission service.
- 2.7. The Parties acknowledge that WAPA has the responsibility for final decisions on the use of Prepayments for construction funding.
- 2.8. The Parties desire to memorialize a process for collaborating on issues that materially impact the DSW Transmission Systems; provided however, that the opportunities for collaboration and information sharing under this Agreement, except for voting, are open to all customers.

3. **GOALS AND OBJECTIVES:**

3.1. This Agreement shall be used as a framework among the Parties to accomplish the following purposes and objectives:

3.1.1. Provide the Contractors with opportunities for input and recommendations to WAPA regarding rates, O&M and RRADs, which WAPA will consider.

3.1.2. Provide the Contractors with opportunities for input into the formation of DSW Transmission Systems Construction Projects in a timely fashion.

3.1.3. Provide the Contractors with opportunities to review and discuss with WAPA P-DP and Intertie Work Plan Reporting, Budget Versus Actual Reporting, and Unobligated Balances.

3.1.4. Continue the use of Prepayments for the DSW Transmission Systems, which promotes reliable transmission service at the lowest rates consistent with sound business principles.

3.1.5. Provide eligible Contractors an opportunity to vote on the use of Prepayments for P-DP and Intertie Construction Projects. Eligible Contractors may also be referred to as Participants upon execution of Exhibit A, attached hereto.

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

5. **TERMINATION OF PRIOR AGREEMENT(S):**

5.1. This Agreement supersedes the JPA Principles upon the effective date [What is the effective date?] of this Agreement.

5.2. Exhibit A, attached hereto, shall fully supersede the MOU upon affirmative vote of the majority of signatories to the MOU for termination in accordance with Section 11 of the MOU. The Parties acknowledge that this Agreement does not alter, change or revise determinations made by WAPA for the use of Prepayments for construction funding in accordance with the MOU.

6. **TERM OF AGREEMENT:**

- 6.1. This Agreement shall become effective upon execution by the Parties.
- 6.2. Exhibit A, attached hereto, shall become effective upon execution by each Participant. Any Participant may terminate its participation in Exhibit A, attached hereto, pursuant to Section 12 of Exhibit A, attached hereto.
- 6.3. Any Contractor may terminate its participation in this Agreement with sixty (60) days advance written notice to WAPA and subsequent notices to all the existing Parties.
- 6.4. If a Contractor no longer has a contract or agreement with WAPA, with advanced written notice by WAPA, **[Why is written notice necessary?]** such Contractor will no longer be a Party to this Agreement.
- 6.5. WAPA shall remain a Party to this Agreement until such time as all Parties terminate their participation; provided however, that WAPA may terminate this Agreement by providing twelve (12) months advance written notice to the Parties.

7. **DEFINITIONS:** All capitalized terms that are not defined herein have the meaning set forth in Attachment No. 1, attached hereto.

8. **EXCHANGE OF INFORMATION:**

8.1. 10-Year Plan: In connection with WAPA's development of the TYP for the DSW Transmission Systems, WAPA will allow Contractors the opportunity to review, comment, and provide input into Construction Projects that are scheduled to be initiated within a ten (10) year planning period.

8.1.1. Process and Schedule: Attachment No. 2, attached hereto, documents the TYP process and schedule.

8.1.2. Information: Prior to any meeting to discuss the TYP, or upon request by a Contractor, WAPA will provide pertinent Materials. Information contained in such Materials shall not compromise the integrity of WAPA's procurement processes or be of a proprietary, confidential, or predecisional nature as determined by WAPA. Contractors will provide feedback on TYP proposals and Materials in a manner that promotes the goals and objectives of this Agreement.

8.1.3. WAPA will facilitate the TYP program in consultation with Contractors and revise the program as system conditions change. Contractors will have the opportunity to provide input to the revisions.

8.2. Replacements, Retirements, Additions and Deletions: The RRADs program will allow Contractors the opportunity to review, comment, and provide input on RRADs as described in Attachment No. 3, attached hereto.

8.2.1. Process and Schedule: Attachment No. 3, attached hereto, documents the RRADs process and schedule.



8.2.2. **Information**: Prior to any meeting to discuss RRADs projects, or upon request by a Contractor, WAPA will provide Materials. Information contained in such Materials shall not compromise the integrity of WAPA's procurement processes or be of a proprietary, confidential, or predecisional nature as determined by WAPA. Contractors will provide feedback on RRADs projects and Materials in a manner that promotes the goals and objectives of this Agreement.

8.2.3. WAPA will facilitate the RRADs program in consultation with Contractors as described in Attachment No. 3, attached hereto. Contractors will have the opportunity to provide input to the revisions.

8.3. **Budget Review**: Attachment No. 4, attached hereto, documents the process to report and review Work Plan Reporting, Budget Versus Actual Reporting, and Unobligated Balances.

8.4. **Transmission Planning**: WAPA provides transmission service under an Open Access Transmission Service Tariff (OATT). Attachment No. 5, attached hereto, documents the Transmission Planning Process and Schedule.

8.5. **Emergencies**: For emergency responses with an estimated cost in excess of One Million Dollars (\$1,000,000), WAPA shall provide the Contractors details of the emergency, estimated costs, impacts (if any) to the DSW Transmission Systems, and anticipated source(s) of funding.

9. **COMMITTEES**: At the election of the Parties, one (1) or more groups or committees may be formed to perform the Contractors functions under this Agreement.

10. **AUTHORIZED REPRESENTATIVES:** Each Contractor, by written notice to WAPA, shall designate the representative(s) who is (are) authorized to act on its behalf with respect to those matters contained herein and pursuant to Exhibit A, attached hereto. WAPA shall also designate an Authorized Representative. In case a Contractor designates more than one (1) representative, the notice shall state the particular matter(s) upon which each designated representative is authorized to act. A Contractor may change the designation of its Authorized Representative(s) upon oral notice given to WAPA and confirmed promptly by written notice. The Authorized Representatives are listed on Attachment No. 7, hereto.

11. **APPLICABLE LAWS, MODIFICATIONS, EXTENSIONS, AND WAIVERS:**

11.1. Applicable Laws: Any reference in this Agreement to any federal act, statute, or regulation, shall be deemed to be a reference to such act, statute, or regulation and all amendments and supplements thereto in existence on the date of execution of this Agreement, unless specifically noted otherwise; provided, that nothing in this Agreement is intended to limit the sovereign authority of Congress. In the event that a change in law materially impairs any obligation, benefit, or interest of any Party under this Agreement, the Parties shall promptly meet and consult in good faith regarding possible changes to the Agreement to address the impact of the change in law. The obligations, benefits, or interests contained herein are cumulative and in addition to, not exclusive of or in substitution for, any other obligations, benefits, or interests that a Party may otherwise have.

11.2. Modifications, Extensions, and Waivers: Any modification, extension, or waiver of any provision or requirement of this Agreement shall be made in writing. Any

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modification, extension, or waiver granted for the benefit of a Party or Parties shall not be denied to any other Party, provided that any federal obligations, resulting from the unique constitutional and political status of Native American tribes, shall remain exclusive to any Party that is a federally recognized Native American tribe.

11.3. Sovereign Immunity: Nothing in this Agreement or in any current or future schedules, attachments, exhibits, amendments, or addenda is intended to be or shall be construed as a waiver of any tribe's sovereign immunity. The Parties understand and agree that neither this Agreement nor any underlying law or procedure shall confer jurisdiction on any state or federal court over any tribe for claims under this Agreement.

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12. **RELATIONSHIP TO CONTRACTOR AGREEMENTS:** Nothing in this Agreement supersedes, pre-empts, or otherwise modifies any existing transmission or joint participation contract between WAPA and any Contractor or group of Contractors. In the event of a conflict between this Agreement and existing Contractor-specific contracts or agreements, the Contractor-specific contract or agreement controls.
13. **PARKER-DAVIS PROJECT PRIORITY USE POWER (PUP):** Nothing in this Agreement shall supersede, pre-empt, or modify the priority of PUP and its related projects, or any existing obligation to provide the same.
14. **LIMITATIONS ON WHAT PARTIES ARE OBLIGATED TO PROVIDE:** This Agreement does not create any obligation for any Party to provide transmission transfer capacity, power supply, or individual Contractor planning services for WAPA resources.

The extent of such obligations are set forth in transmission or joint participation contracts between WAPA and any Contractor or group of Contractors, and/or are pursuant to Federal Reclamation projects for PUP. Information sharing under this Agreement shall not violate confidentiality limitations, restrictions on proprietary information, or compel WAPA to be a conduit to sensitive materials or arrangements with third parties.

15. **ATTACHMENTS:** Certain terms of this Agreement that may change during the term of this Agreement are set forth in attachments as formulated and modified from time to time. The initial Attachments 1 through 7 are attached hereto, and each is incorporated into this Agreement in accordance with its respective terms until superseded by a subsequent attachment. WAPA shall provide to a Contractor(s) written notice of, and opportunity to comment on, any change, modification, or addition of an attachment at least thirty (30) Days prior to the effective date of such revised attachment and at least ninety (90) Days prior for an additional attachment. Changes, additions, or modifications to the attachments shall be reflected in new or revised attachments and will be established by WAPA and distributed in accordance with Provision 40 of the General Power Contract Provisions.
16. **GENERAL POWER CONTRACT PROVISIONS:** The General Power Contract Provisions (GPCP) effective September 1, 2007, attached hereto as Attachment 6, are hereby made a part of this Agreement with the same force and effect as if expressly set forth herein; provided, that if the provisions in the GPCP are in conflict with this Agreement, the terms of this Agreement shall control.
17. **AMENDMENTS AND MODIFICATIONS:** This Agreement may be amended or modified only by mutual written agreement duly executed by the Parties.

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18. **INCORPORATION OF THE EXPLANATORY RECITALS AND GOALS AND OBJECTIVES:** The Preamble, all Explanatory Recitals and the Goals and Objectives referenced or in any way discussed herein are hereby fully incorporated by this reference, as though fully stated herein and are considered a material part of this Agreement.

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19. **EXHIBITS:** Certain requirements or provisions of this Agreement that may change during the term hereof are set forth in Exhibits. The initial Exhibit A is attached hereto and made a part hereof, and shall be in force and effect in accordance with its respective provisions until superseded by a subsequent exhibit executed by the Authorized Representative(s). Each superseding exhibit shall be attached to and become part of this Agreement. New exhibits may be added in the future, as required, and shall be made a part of this Agreement by mutual written agreement by the Parties.

20. **CONTINUED COOPERATION:** The Parties will work together in a collaborative manner to accommodate changes in circumstances during the term of this Agreement. Nothing in this Agreement limits WAPA or Native American tribes from engaging in government-to-government consultations.

21. **EXECUTION IN COUNTERPART:** This Agreement 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 Agreement may be detached without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto, by having attached to it one (1) or more signature pages.

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22. **AUTHORITY TO EXECUTE:** Each individual signing this Agreement certifies that the party represented has duly authorized such individual to execute, bind, and obligate the party.

[Remainder of Page Intentionally Blank]

The Parties agree this Agreement No. XX-DSR-XXXXX has been executed by duly authorized representatives of the Contractor and WAPA and is to be effective in accordance with Section 1, herein.

THE UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY WESTERN  
AREA POWER ADMINISTRATION

Date \_\_\_\_\_

By \_\_\_\_\_  
Name

Title \_\_\_\_\_

Address for Desert Southwest Region

P.O. Box 6457

Phoenix, AZ 85005-6457

The Parties agree this Agreement No. XX-DSR-XXXXX has been executed by duly authorized representatives of the Contractor and WAPA and is to be effective in accordance with Section 1, herein.

(SEAL)

NAME OF ORGANIZATION

ATTEST

By \_\_\_\_\_

By \_\_\_\_\_  
Customer Name

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



**PROCESS FOR THE USE OF PREPAYMENTS FOR CONSTRUCTION FUNDING**

Commented [Office2]: Does the term "Exhibit A" need to be included in Section 18 of the agreement?

1. This Exhibit A, under and as part of Agreement No. XX-DSR-XXXXX (Agreement), shall become effective on this \_\_\_\_ day of \_\_\_\_\_, 2018, and shall remain in effect until superseded by another Exhibit A; provided, this Exhibit A, or any superseding Exhibit A, shall terminate in accordance with Section 12, herein.

2. **ELIGIBILITY:**

2.1. Those Contractors seeking to be a Participant to this Exhibit A must have one (1) or more contracts with WAPA, with a term of at least one year, for: i) firm point-to-point or network transmission service on the DSW Transmission Systems; ii) firm electric service and/or Parker-Davis Priority Use Power service from a federal hydropower project that includes payment for transmission service on the Parker-Davis Project or Intertie Project systems; or iii) firm transmission service on the Parker-Davis Project or Intertie Project systems,

Deleted: of one (1) year or longer in duration. This includes Contractors that have contracts with WAPA for firm electric service from federal hydropower that includes payment for transmission service on the DSW Transmission Systems. The Contractor must be taking transmission service under the contract and not be in default of payment obligations to WAPA at the time of a vote conducted

2.2. After the Agreement has taken effect, future eligible Contractors will be required to execute this Exhibit A to participate in the Prepayment funding process described in this Exhibit A. Pursuant to Section 10 of the Agreement and as documented in Attachment No. 7, attached hereto, signatories to this Exhibit A shall designate an Authorized Representative and an alternate to participate in the Prepayment funding process.

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3. **COORDINATION WITH THE TYP PROCESS:**

3.1. WAPA will develop a TYP. The purpose of the TYP program is to **clearly describe challenges, goals, strategies, and accomplishments necessary to**

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**maintain reliable transmission]** as well as provide a mechanism for collaboration. **[The bracketed language is not what the TYP does.]**

3.2. WAPA will use appropriations from Congress to fund its construction activities whenever available. WAPA may seek Participant approval to fund Construction Projects identified in the TYP and the design of such Construction Projects with Prepayments whenever appropriations are estimated to be insufficient.

3.3. Criteria: Any Capital Improvement to the Desert Southwest Region Systems that is not included in the TYP, other than those performed by DSW in the event of emergencies, shall satisfy at least one of the following criteria:

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3.3.1. The anticipated annual revenue received from the Capital Improvement meets or exceeds the total annual costs associated with the TYP. When a TYP is included in the DSW revenue requirements for firm and nonfirm transmission service, it shall not increase transmission rates.

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3.3.2. The Parties have approved the Capital Improvement.

3.3.3. The proposed Capital Improvement is funded over its useful life by the entity requesting the Capital Improvement.

3.4. In accordance with Attachment No. 2, attached hereto, and Section 4, herein, WAPA will hold an annual Prepayment Funding Meeting to seek Participant approval to fund projects in the TYP with Prepayments.

3.5. WAPA may hold supplemental Prepayment Funding Meetings at other times, as deemed necessary by WAPA, to seek the use of Prepayments for Construction Projects not previously included in the TYP or approved for funding with Prepayments.

4. **PREPAYMENT FUNDING MEETING PROCEDURES:**

4.1. The Prepayment Funding Meeting will be hosted by WAPA. WAPA shall provide the Participants notice of the date and location of the Prepayment Funding Meeting at least twenty-eight (28) Days in advance.

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4.2. WAPA will distribute any Materials to the Participants at least fourteen (14) Days prior to the meeting.

5. **VOTING PROCESS:**

5.1. Each Participant will have one (1) vote. Voting will be in the form of voice or show of hands during the meeting, or by email to the person designated by WAPA to receive such votes. Only those votes received prior to or during the meeting will be counted.

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5.2. Participant approval for the portion of each Construction Project or design of Construction Projects to be funded by Prepayments requires an affirmative vote of greater than fifty (50) percent of those Participants that vote.

5.3. Approved Projects are not subject to re-voting in subsequent years except for consideration of additional Prepayment funding when required in accordance with Section 9, hereof.

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5.4. If WAPA chooses to pursue a Construction Project that Participants do not approve to fund with Prepayments, WAPA shall find other sources to fund the Construction Project other than using Prepayments or move the Construction Project to a later FY for reconsideration.

6. **EMERGENCY EXCEPTION:** WAPA may use any available sources of funding including Prepayments without prior Contractor notification to mitigate emergency conditions for the safety and reliability of the DSW Transmission Systems.
7. **RELIABILITY EXCEPTION:** WAPA may use any available sources of funding including Prepayments for Construction Projects deemed necessary to comply with reliability standards as determined by WAPA.
8. **PROJECT REPORTS:** Prior to a Prepayment Funding Meeting, WAPA shall prepare and distribute to Participants a report on the use of Prepayments for Approved Projects that are in progress or completed since the prior meeting. The report shall include project status, the use of Prepayments to date, and actual or estimated changes to the amount of Prepayments that will be used for the Approved Project.
9. **PREPAYMENT PROGRAM EXECUTION:** Projects are approved for Prepayment funding with an estimated cost to be covered by Prepayments as provided by WAPA. WAPA will manage Prepayment funding of Approved Projects within the following limitations:
  - 9.1. No further Participant approval is required for Approved Projects that exceed the cost to be covered by Prepayments by not more than ten (10) percent or \$2 million, whichever is less.
  - 9.2. For Approved Projects that exceed the cost to be covered by Prepayments by not more than twenty-five (25) percent, WAPA may use Prepayment funds from other projects that are completed or anticipated to be completed below their cost to be covered by Prepayments without further approval. [What happens between the 10% in 9.1 and the 25% in 9.2?]

9.3. For Approved Projects that are anticipated to exceed the Prepayment cost limitations in subsections 9.1 and 9.2, herein, approval by the Participants is required to cover the cost with additional Prepayments.

9.4. Nothing in Section 9 herein prevents WAPA from seeking Participant approval to use additional Prepayments for Approved Projects.

9.5. WAPA may adjust any portion of a Construction Project cost that is not covered by Prepayments without the approval of the Participants.

10. **USE OF PREPAYMENTS:** WAPA shall not transfer Prepayment dollars to other WAPA regions or fund Construction Projects with Prepayments that financially impact systems other than DSW Transmission Systems.

11. **MODIFICATIONS:** This Exhibit A shall be modified only in accordance with Section 18 of the Agreement.

12. **TERMINATION OF EXHIBIT AND LIABILITY HEREUNDER:**

12.1. Any Participant may withdraw from this Exhibit A for any reason upon fourteen (14) Days written notice. The Participants also agree that no Participant shall have any liability of any kind to the other Participants for a termination or breach of this Exhibit A. Withdrawal from this Exhibit A eliminates the withdrawing Participant's right to vote on the use of Prepayments, but does not relieve the Participant of any obligation to make payment under any contracts or agreements with WAPA.

12.2. This Exhibit A may be terminated at any time by mutual agreement of WAPA and the Participants. Termination of this Exhibit A shall occur with written approval

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Exhibit A  
Agreement No. XX-DSR-XXXXX

by WAPA and an affirmative vote of greater than fifty (50) percent of the Participants that vote in accordance with Section 5.1, herein.

12.3. In the event that WAPA permanently discontinues the use of Prepayments as a source for funding Construction Projects, WAPA will terminate this Exhibit A upon twelve (12) months advance written notice to the Participants.

13. **EXECUTION BY COUNTERPARTS:** This Exhibit A 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 Exhibit A may be detached by any counterpart of this Exhibit A without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Exhibit A identical in form hereto, by having attached to it one (1) or more signature pages.

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Exhibit A  
Agreement No. XX-DSR-XXXXX

The Participants and WAPA have caused this Exhibit A, to Agreement No. XX-DSR-XXXXX, to be effective in accordance with Section 1, hereof,

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THE UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY WESTERN  
AREA POWER ADMINISTRATION

By \_\_\_\_\_  
Name

Title \_\_\_\_\_

Address for Desert Southwest Region  
P.O. Box 6457  
Phoenix, AZ 85005-6457

Accepted and agreed to this \_\_\_\_ day of \_\_\_\_\_, 2018.

PARTICIPANT ORGANIZATION NAME

By \_\_\_\_\_  
Customer Name

Title \_\_\_\_\_

Exhibit A  
Agreement No. XX-DSR-XXXXX

The Participants and WAPA have caused this Exhibit A, to Agreement No. XX-DSR-XXXXX, to be effective in accordance with Section 1, hereof,

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THE UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY WESTERN  
AREA POWER ADMINISTRATION

By \_\_\_\_\_  
Name

Title \_\_\_\_\_

Address for Desert Southwest Region  
P.O. Box 6457  
Phoenix, AZ 85005-6457

Accepted and agreed to this \_\_\_\_ day of \_\_\_\_\_, 2018.

PARTICIPANT ORGANIZATION NAME

By \_\_\_\_\_  
Customer Name

Title \_\_\_\_\_



### **DEFINITIONS**

Analysis of Alternatives (AOA): The document(s) used by WAPA to examine options for replacing and adding segments of the DSW Transmission Systems, including the value(s) and cost(s) of various alternatives leading to recommendations that help define the Construction Projects or RRADs projects that become part of the TYP.

Approved Project: A Construction Project or design of a Construction Project funded partially or in whole by Prepayments and approved under this Agreement by the Participants.

Construction Projects: New or large-scale replacement of permanent structures or equipment related to the DSW Transmission Systems that are or will be capitalized by WAPA.

Contractor: An entity with one (1) or more contracts or agreements [Track 2.1 language.] with WAPA and who has chosen to be a Party to this Agreement.

Day: A calendar day.

Desert Southwest Region Transmission Systems (DSW Transmission Systems): All Parker Davis Project and southern portion [Define] of the Pacific Northwest-Pacific Southwest Intertie Project assets managed by WAPA.

Fiscal Year (FY): The twelve (12) month period so designated by Federal law. Until changed by Federal law, Fiscal Year means the period commencing on October 1 of each year, immediately after midnight on September 30, and ending at midnight on September 30 of the following year.

Intertie: Southern portion of the Pacific Northwest-Pacific Southwest Intertie Project assets managed by WAPA.

Materials: Documents, data, studies, and/or reports related to the implementation of this Agreement.

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Operation and Maintenance (O&M): WAPA's preventative and/or corrective operations and maintenance in either a planned or unplanned manner of the DSW Transmission Systems.

Parker-Davis Project (P-DP): Federally owned and managed transmission facilities integrated by the Parker-Davis Project Consolidation Act, and any changes or additions thereto. **[Compare to customer draft.]**

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P-DP Priority Use Power or Project Use Power (PUP): The capacity and associated energy including ancillary services, transmission services, and control area responsibilities associated with P-DP generation for use on or by Federal Reclamation projects.

Participant: An eligible Contractor whose authorized representative has signed Exhibit A, attached hereto, and a part of this Agreement.

Prepayments: Payments made in advance for transmission service on the DSW Transmission Systems.

Prepayment Funding Meeting: A meeting held for the Participants to approve the use of Prepayments to fund Construction Projects or design of Construction Projects.

Purchased Power and Wheeling Expenses (PPW): Those purchased power and wheeling expenses associated with the operation of the DSW Transmission Systems.

Replacements, Retirements, Additions and Deletions (RRADs): Moveable property, software, and capitalized maintenance related work, typically smaller than Construction Projects and normally, but not always, designed, built, and commissioned by WAPA's internal workforce.

10-Year Plan (TYP): The TYP provides for the planned Construction Projects in the Desert Southwest Region. **[Compare to customer draft.]**

Unobligated Balances: The amounts of budget authority that have not yet been obligated by contract or other legally binding action by the government.

WAPA HQ: The headquarters of WAPA which oversees and supports the administration of the Desert Southwest Region, Rocky Mountain Region, Sierra Nevada Region, Upper Great Plains Region, and Colorado River Storage Project Management Center.

Work Plan(s): WAPA estimates, projections, and/or related data associated with Construction Projects, RRADs, O&M and administrative expenses, PPW, and/or any other relevant budgeting activities connected to or impacting the DSW Transmission Systems. Work Plans may include Materials related to Desert Southwest Region or WAPA HQ.

**10-YEAR PLAN PROCESS AND SCHEDULE**

This Attachment documents the TYP process and schedule for Contractor participation, discussions, contributions, and input on proposed Construction Projects and AOA studies. Contractor input is solicited and considered by WAPA throughout the TYP process. Temporary deviations in this process and schedule may result from Contractor requests or changing system conditions.

1. **TYP PROCESS:**

1.1. On an annual basis, WAPA conducts four (4) primary TYP meetings that provide for Contractor involvement. Additional coordination meetings are scheduled as needed to facilitate TYP development with Contractors. Between November 1st and April 30th, Contractors can submit requests for potential projects to WAPA. These requests serve as a foundation to establish AOAs. AOAs are proposed and reevaluated with Contractor input. The four (4) primary TYP meetings generally consist of:

1.1.1. 1st Quarter – TYP Active Projects Update Meeting:

- 1.1.1.1. In this meeting, typically held in March, WAPA provides Contractors with updates on costs, budgets, and schedules for Construction Projects and related activities.
- 1.1.1.2. Recommended alternatives for the previous calendar year's AOA studies are also presented and discussed with the Contractors.
- 1.1.1.3. Recommended alternatives from AOA studies are evaluated with Contractor's input.

1.1.2. 2nd Quarter –TYP Draft Plan Meeting:

- 1.1.2.1. In this meeting, typically held in June, WAPA provides Contractors with a draft TYP that includes rate analysis. Construction Projects that will be voted on at the Prepayment Funding Meeting are reviewed and discussed in detail.
- 1.1.2.2. The previous year’s AOA studies have typically been completed and new AOA studies are proposed to the Contractors.

1.1.3. 3rd Quarter – TYP Formal Plan Meeting:

- 1.1.3.1. During this meeting, typically held in September, WAPA provides Contractors with the final TYP that includes rate analysis. Final revisions to Construction Projects to be voted on in the Prepayment Funding Meeting are reviewed and discussed.
- 1.1.3.2. In-progress AOA studies and proposed alternatives are discussed with the Contractors.

1.1.4. 4th Quarter – Prepayment Funding Meeting:

- 1.1.4.1. In this meeting, typically held in December, Participants will vote on the use of Prepayments for Construction Projects as described in Exhibit A, attached hereto.
- 1.1.4.2. WAPA will provide information on appropriations available for Construction Projects.
- 1.1.4.3. An update on in-progress AOA studies is provided to Contractors.

2. **TYP MEETING PROCEDURES:**

- 2.1. WAPA shall provide notice of the date and location of the meeting at least twenty-eight (28) Days in advance.
- 2.2. WAPA will distribute any Materials prior to the meeting in a timely fashion.
- 2.3. Procedures for the Prepayment Funding Meeting are described in Exhibit A, Section 4,

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**REPLACEMENTS, RETIREMENTS, ADDITIONS  
AND DELETIONS PROCESS AND SCHEDULE**

This Attachment No. 3 documents the RRADs collaboration and information sharing opportunities with Contractors to be coordinated by WAPA on an annual basis.

1. **RRADs PROCESS AND SCHEDULE:**

- 1.1. WAPA conducts TYP meetings as described in Attachment No. 2; a Work Plan meeting and Budget Versus Actual meeting as described in Attachment No. 4.

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RRADs information is generally shared with the Contractors at the following meetings:

- 1.1.1. 2nd Quarter –Work Plan Meeting: Present RRADs budget estimates.
- 1.1.2. 3rd Quarter – TYP Formal Plan Meeting: Present Materials related to RRADs. For RRADs projects that have an estimated cost in excess of One Million Dollars (\$1,000,000), WAPA will include further information regarding scope and cost.
- 1.1.3. 4th Quarter – Budget Versus Actual Reporting Meeting: Present RRADs budget versus actual costs.

**BUDGET REVIEW**

This Attachment No. 4 documents the budget collaboration and information sharing opportunities with Contractors to be coordinated by WAPA on an annual basis.

1. **WORK PLAN REPORTING:**

**Deleted:** Documents the development and implementation of the Work Plan reporting.

1.1. **Schedule:** The Work Plan meeting will be held each year, typically between April and May.

1.2. **Reporting:**

1.2.1. WAPA will report the prior three (3) FYs of actual costs and budget submissions and/or budget estimates for the next three (3) out-years including the formulation year.

1.2.2. The following table contains budget information to be reported on WAPA HQ, WAPA HQ for DSW Transmission Systems, and DSW Transmission Systems:

Description	WAPA HQ	WAPA HQ for DSW Transmission Systems	DSW Transmission Systems
O&M / General & Administrative	X	X	X
RRADs	X	X	X
Indirect/Direct Charge/Allocation Information	X		
Organization Information	X	X	
Budget Activity Information			X
PPW			X
Construction Projects			X
Rate Analysis			X

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2. **BUDGET VERSUS ACTUAL REPORTING:**

**Deleted:** Documents the development and implementation of the budget versus actual reporting.



2.1. Schedule: The Budget Versus Actual meeting will be held each year, typically during November and December.

2.2. Reporting:

2.2.1. WAPA will report the prior three (3) FYs of actual costs including the most recent FY end, the budget submission and the revalidated **[What does this mean?]** budget for the most recent FY end.

2.2.2. The following table contains budget information to be reported on WAPA HQ, WAPA HQ for DSW Transmission Systems, and DSW Transmission Systems:

Description	WAPA HQ	WAPA HQ for DSW Transmission Systems	DSW Transmission Systems
O&M / General & Administrative	X	X	X
RRADs	X	X	X
Indirect/Direct Charge/Allocation Information	X		
Organization Information	X	X	
Budget Activity Information			X
PPW			X
Construction Projects			X
Cash Flow/Unobligated Balances			X

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3. **UNOBLIGATED BALANCES:** ▼

Deleted: Documents the development and implementation of Unobligated Balances.

3.1. Schedule: WAPA will consult with the Contractors at the Work Plan meeting and Budget Versus Actual meeting on the development of a DSW Transmission Systems-specific Unobligated Balance strategy.

3.2. Reporting: Report the following items for the DSW Transmission Systems:

3.2.1. Unobligated Balances as of the end of the previous Fiscal Year

3.2.2. Five (5) Year Cash Flow Forecast

3.2.3. Allowed Unobligated Balances in accordance with the current strategy

3.2.4. Approved Projects committed to using Unobligated Balances

4. **MEETING PROCEDURES:**

4.1. WAPA shall provide notice of the date and location of the meeting at least twenty-eight (28) Days in advance.

4.2. WAPA will distribute any Materials prior to the meetings in a timely fashion.

**TRANSMISSION PLANNING PROCESS AND SCHEDULE**

WAPA's planning process is described in Attachment P to its OATT. Opportunities for Contractor participation in WAPA's transmission planning is described in Attachment P, as posted on WAPA's Open Access Same Time Information System.

**ADDITIONAL MEETINGS:** Upon request from a Contractor, WAPA will assess the need for additional customer meetings. If determined to be beneficial to the Parties, WAPA will conduct up to two (2) additional meetings annually.

WESTERN AREA POWER ADMINISTRATION  
 GENERAL POWER CONTRACT PROVISIONS

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\*Legal Citation Revised September 1, 2007

WESTERN AREA POWER ADMINISTRATION  
GENERAL POWER CONTRACT PROVISIONS

I. **APPLICABILITY.**

1. Applicability.

1.1. These General Power Contract Provisions (Provisions) shall be a part of the contract to which they are attached. In the event these Provisions differ from requirements of the contract, specific terms set forth in the contract shall prevail.

1.2. If the Contractor has member utilities which are either directly or indirectly receiving benefits from the contract, then the Contractor shall require such members to comply with Provisions 10, 17, 18, 19, 29, 30, 36, 43, 44, and 45 of these General Power Contract Provisions.

II. **DELIVERY OF SERVICE PROVISIONS.**

2. Character of Service.

Electric energy supplied or transmitted under the contract will be three-phase, alternating current, at a nominal frequency of sixty (60) hertz (cycles per second).

3. Use of Capacity or Energy in Excess of Contract Obligation.

The Contractor is not entitled to use Federal power, energy, or capacity in amounts greater than the Western contract delivery obligation in effect for each type of service provided for in the contract except with the approval of Western. Unauthorized overruns of contract delivery obligations shall be subject to charges specified in the contract or the applicable rate schedules. Overruns shall not establish any continuing right thereto and the Contractor shall cease any overruns when requested by Western, or in the case of authorized overruns, when the approval expires, whichever occurs first. Nothing in the contract shall obligate Western to increase any delivery obligation. If additional power, energy, or capacity is not available from Western, the responsibility for securing additional power, energy, or capacity shall rest wholly with the Contractor.

4. Continuity of Service.

Electric service will be supplied or transmitted continuously except for: (1) fluctuations, interruptions, or reductions due to uncontrollable forces, as defined in Provision 34 (Uncontrollable Forces) herein, (2) fluctuations, interruptions, or reductions due to operation of devices installed for power system protection; and (3) temporary fluctuations, interruptions, or reductions, which, in the opinion of the party supplying the service, are necessary or desirable for the purposes of maintenance, repairs, replacements, installation of equipment, or investigation and inspection. The party supplying service, except in case of emergency, will give the party to whom service is being provided reasonable advance notice of such temporary interruptions or reductions and will remove the cause thereof with diligence.

5. Multiple Points of Delivery.

When electric service is supplied at or transmitted to two or more points of delivery under the same rate schedule, said rate schedule shall apply separately to the service supplied at or

transmitted to each point of delivery; Provided, That where the meter readings are considered separately, and during abnormal conditions, the Contractor's system is interconnected between points of delivery such that duplication of metered power is possible, the meter readings at each affected point of delivery will be adjusted to compensate for duplication of power demand recorded by meters at alternate points of delivery due to abnormal conditions which are beyond the Contractor's control or temporary conditions caused by scheduled outages.

6. Metering.

6.1. The total electric power and energy supplied or transmitted under the contract will be measured by metering equipment to be furnished and maintained by Western, a designated representative of Western, or where situations deem it appropriate as determined by Western, by the Contractor or its agent(s). In the event metering equipment is furnished and maintained by the Contractor or its agent(s) and the equipment is used for billing and other accounting purposes by Western, the Contractor shall ensure that the metering equipment complies with applicable metering policies established by Western.

6.2. Meters shall be secured by appropriate security measures and meters shall not be accessed except when the meters are to be inspected, tested, adjusted, or repaired. Representatives of affected parties shall be afforded reasonable opportunity to be present upon such occasions. Metering equipment shall be inspected and tested each year by the party responsible for meter maintenance, unless a different test interval is determined in accordance with good utility practices by an applicable regional metering policy, or as agreed upon by the parties. Meters shall also be tested at any reasonable time upon request by a party hereto, or by an affected supplemental power supplier, transmission agent, or control area operator. Any metering equipment found to be damaged, defective, or inaccurate shall be repaired and readjusted or replaced by the party responsible for meter maintenance as soon as practicable. Meters found with security breaches shall be tested for tampering and, if appropriate, meter readings shall be adjusted by Western pursuant to Provision 6.3 below.

6.3. Except as otherwise provided in Provision 6.4 hereof, should any meter that is used by Western for billing or other accounting purposes fail to register accurately, the electric power and energy supplied or transmitted during the period of failure to register accurately, shall, for billing purposes, be estimated by Western from the best available information.

6.4. If inspections and tests of a meter used by Western for billing or other accounting purposes disclose an error exceeding 2 percent, or a lesser range in error as agreed upon by the parties, then a correction based upon the inaccuracy found shall be made to the service records for the period of inaccuracy as determined by Western. If the period of inaccuracy cannot be determined, the inaccuracy shall be assumed to have existed during the entire monthly billing period immediately preceding the billing period in which the inspection or test was made and the resulting correction shall be made accordingly.

6.5. Any correction in billing or other accounting information that results from a correction in meter records shall be made in a subsequent monthly bill rendered by Western to the Contractor. Payment of such bill shall constitute full adjustment of any claim between the parties arising out of inaccurate metering equipment.

7. Existence of Transmission Service Contract.

If the contract provides for Western to furnish services using the facilities of a third party, the obligation of Western shall be subject to and contingent upon the existence of a transmission service contract granting Western rights to use such facilities. If Western acquires or constructs facilities which would enable it to furnish direct service to the Contractor, Western, at its option, may furnish service over its own facilities.

8. Conditions of Transmission Service.

8.1. When the electric service under the contract is furnished by Western over the facilities of others by virtue of a transmission service arrangement, the power and energy will be furnished at the voltage available and under the conditions which exist from time to time on the transmission system over which the service is supplied.

8.2. Unless otherwise provided in the contract or applicable rate schedule, the Contractor shall maintain a power factor at each point of delivery from Western's transmission agent as required by the transmission agent.

8.3. Western will endeavor to inform the Contractor from time to time of any changes planned or proposed on the system over which the service is supplied, but the costs of any changes made necessary in the Contractor's system, because of changes or conditions on the system over which the service is supplied, shall not be a charge against or a liability of Western.

8.4. If the Contractor, because of changes or conditions on the system over which service under the contract is supplied, is required to make changes on its system at its own expense in order to continue receiving service under the contract, then the Contractor may terminate service under the contract upon not less than sixty (60) days written notice given to Western prior to making such changes, but not thereafter.

8.5. If Western notifies the Contractor that electric service provided for under the contract cannot be delivered to the Contractor because of an insufficiency of capacity available to Western in the facilities of others over which service under the contract is supplied, then the Contractor may terminate service under the contract upon not less than sixty (60) days written notice given to Western prior to the date on which said capacity ceases to be available to Western, but not thereafter.

9. Multiple Points of Delivery Involving Direct and Indirect Deliveries.

When Western has provided line and substation capacity under the contract for the purpose of delivering electric service directly to the Contractor at specified direct points of delivery and also has agreed to absorb transmission service allowance or discounts for deliveries of energy over other system(s) to indirect points of delivery and the Contractor shifts any of its load served under the contract from direct delivery to indirect delivery, Western will not absorb the transmission service costs on such shifted load until the unused capacity, as determined solely by Western, available at the direct delivery points affected is fully utilized.

10. Construction, Operation, and Maintenance of Contractor's Power System.

The Contractor shall, and, if applicable, shall require each of its members or transmission agents to construct, operate, and maintain its power system in a manner which, as determined by Western, will not interfere with the operation of the system of Western or its transmission agents over which electric services are furnished to the Contractor under the contract, and in a manner which will coordinate

with the protective relaying and other protective arrangements of the system(s) of Western or Western's transmission agents. Western may reduce or discontinue furnishing services to the Contractor if, after notice by Western, the Contractor fails or refuses to make such changes as may be necessary to eliminate an unsatisfactory condition on the Contractor's power system which is determined by Western to interfere significantly under current or probable conditions with any service supplied from the power system of Western or from the power system of a transmission agent of Western. Such a reduction or discontinuance of service will not relieve the Contractor of liability for any minimum charges provided for in the contract during the time said services are reduced or discontinued. Nothing in this Provision shall be construed to render Western liable in any manner for any claims, demands, costs, losses, causes of action, damages, or liability of any kind or nature arising out of or resulting from the construction, operation, or maintenance of the Contractor's power system.

### III. RATES, BILLING, AND PAYMENT PROVISIONS.

#### 11. Change of Rates.

Rates applicable under the contract shall be subject to change by Western in accordance with appropriate rate adjustment procedures. If at any time the United States promulgates a rate changing a rate then in effect under the contract, it will promptly notify the Contractor thereof. Rates shall become effective as to the contract as of the effective date of such rate. The Contractor, by written notice to Western within ninety (90) days after the effective date of a rate change, may elect to terminate the service billed by Western under the new rate. Said termination shall be effective on the last day of the billing period requested by the Contractor not later than two (2) years after the effective date of the new rate. Service provided by Western shall be paid for at the new rate regardless of whether the Contractor exercises the option to terminate service.

#### 12. Minimum Seasonal or Annual Capacity Charge.

When the rate in effect under the contract provides for a minimum seasonal or annual capacity charge, a statement of the minimum capacity charge due, if any, shall be included in the bill rendered for service for the last billing period of the service season or contract year as appropriate, adjusted for increases or decreases in the contract rate of delivery and for the number of billing periods during the year or season in which service is not provided. Where multiple points of delivery are involved and the contract rate of delivery is stated to be a maximum aggregate rate of delivery for all points, in determining the minimum seasonal or annual capacity charge due, if any, the monthly capacity charges at the individual points of delivery shall be added together.

#### 13. Billing and Payment.

13.1. Western will normally issue bills to the Contractor for services furnished during the preceding month within ten (10) days after the end of the billing period.

13.2. If Western is unable to issue timely monthly bill(s), Western may elect to render estimated bill(s). Such estimated bill(s) shall be subject to the same payment provisions as final bill(s), and any applicable adjustments will be shown on a subsequent monthly bill.

13.3. Payments of bills issued by Western are due and payable by the Contractor before the close of business on the twentieth (20th) calendar day after the date of issuance of each bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday. Bills shall be considered paid when payment is received by Western. Bills will be paid electronically or via the



Automated Clearing House method of payment unless a written request to make payments by mail is submitted by the Contractor and approved by Western. Should Western agree to accept payments by mail, these payments will be accepted as timely and without assessment of the charge provided for in Provision 14 (Nonpayment of Bills in Full When Due) if a United States Post Office first class mail postmark indicates the payment was mailed at least three (3) calendar days before the due date.

13.4. The parties agree that net billing procedures will be used for payments due Western by the Contractor and for payments due the Contractor by Western for the sale or exchange of electric power and energy, use of transmission facilities, operation and maintenance of electric facilities, and other services. Payments due one party in any month shall be offset against payments due the other party in such month, and the resulting net balance shall be paid to the party in whose favor such balance exists. The parties shall exchange such reports and information that either party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

14. Nonpayment of Bills in Full When Due.

14.1. Bills not paid in full by the Contractor by the due date specified in Provision 13 (Billing and Payment) hereof shall bear a charge of five hundredths percent (0.05%) of the principal sum unpaid for each day payment is delinquent, to be added until the amount due is paid in full. Western will also assess a fee of twenty-five dollars (\$25.00) for processing a late payment. Payments received will first be applied to the charges for late payment assessed on the principal and then to payment of the principal.

14.2. Western shall have the right, upon not less than fifteen (15) days advance written notice, to discontinue furnishing the services specified in the contract for nonpayment of bills in full when due, and to refuse to resume such services so long as any part of the amount due remains unpaid. Such a discontinuance of service will not relieve the Contractor of liability for minimum charges during the time service is so discontinued. The rights reserved to Western herein shall be in addition to all other remedies available to Western either by law or in equity, for the breach of any of the terms hereof.

15. Adjustments for Fractional Billing Period.

The demand or capacity charge and minimum charges shall each be proportionately adjusted when fractional billing periods are applicable under this contract. A fractional billing period can occur: 1) at the beginning or end of electric service; 2) at the beginning or end of irrigation pumping service each year; 3) for a fractional billing period under a new rate schedule; or 4) for fractional periods due to withdrawals of electric services. The adjustment will be made based on the ratio of the number of hours that electric service is available to the Contractor in such fractional billing period, to the total number of hours in the billing period involved. Energy billing shall not be affected by fractional billing periods.

16. Adjustments for Curtailments to Firm Service.

16.1. Billing adjustments will be made if firm electric service is interrupted or reduced because of conditions on the power system of the United States for periods of one (1) hour or longer in duration each. Billing adjustments will not be made when such curtailment of electric service is due to a request by the Contractor or a discontinuance of electric service by Western pursuant to Provision 14 (Nonpayment of Bills In Full When Due). For purposes of billing adjustments under this Provision, the term power system of the United States shall include transmission facilities used under contract but not owned by the United States.

16.2. The total number of hours of curtailed firm electric service in any billing period shall be determined by adding: (1) the sum of the number of hours of interrupted electric service to (2) the product, of each reduction, of: the number of hours reduced electric service and the percentage by which electric service was reduced below the delivery obligation of Western at the time of each said reduction of electric service. The demand or capacity charge and applicable minimum charges shall each be proportionately adjusted in the ratio that the total number of hours of electric service determined to have been curtailed bears to the total number of hours in the billing period involved.

16.3. The Contractor shall make written claim within thirty (30) days after receiving the monthly bill, for adjustment on account of any curtailment of firm electric service, for periods of one (1) hour or longer in duration each, alleged to have occurred that is not reflected in said bill. Failure to make such written claim, within said thirty-day (30-day) period, shall constitute a waiver of said claim. All curtailments of electric service, which are due to conditions on the power system of the United States, shall be subject to the terms of this Provision; Provided, That withdrawal of power and energy under the contract shall not be considered a curtailment of electric service.

#### **IV. POWER SALES PROVISIONS.**

17. Resale of Firm Electric Service (Wholesale Sales for Resale).

The Contractor shall not sell any firm electric power or energy supplied under the contract to any electric utility customer of the Contractor for resale by that utility customer; Provided, That the Contractor may sell the electric power and energy supplied under the contract to its members on condition that said members not sell any of said power and energy to any customer of the member for resale by that customer.

18. Distribution Principles.

The Contractor agrees that the benefits of firm electric power or energy supplied under the contract shall be made available to its consumers at rates that are established at the lowest possible level consistent with sound business principles, and that these rates will be established in an open and public manner. The Contractor further agrees that it will identify the costs of firm electric power or energy supplied under the contract and power from other sources to its consumers upon request. The Contractor will demonstrate compliance with the requirements of this Provision to Western upon request.

19. Contract Subject to Colorado River Compact.

Where the energy sold under the contract is generated from waters of the Colorado River system, the contract is made upon the express condition and with the express covenant that all rights under the contract shall be subject to and controlled by the Colorado River Compact approved by Section 13 (a) of the Boulder Canyon Project Act of December 21, 1928, 43 U.S.C. §§ 617a-e, and the parties to the contract shall observe and be subject to and controlled by said Colorado River Compact in the construction, management, and operation of the dams, reservoirs, and powerplants from which electrical energy is to be furnished by Western to the Contractor under the contract, and in the storage, diversion, delivery, and use of water for the generation of electrical energy to be delivered by Western to the Contractor under the contract.

#### **V. FACILITIES PROVISIONS.**

20. Design Approval.

All facilities, construction, and installation by the Contractor pursuant to the contract shall be subject to the approval of Western. Facilities interconnections shall normally conform to Western's current "General Requirements for Interconnection," in effect upon the signing of the contract document providing for each interconnection, copies of which are available from Western. At least ninety (90) days, unless otherwise agreed, prior to the date the Contractor proposes to commence construction or to incur an obligation to purchase facilities to be installed pursuant to the contract, whichever date is the earlier, the Contractor shall submit, for the approval of Western, detailed designs, drawings, and specifications of the facilities the Contractor proposes to purchase, construct, and install. The Contractor assumes all risks for construction commenced or obligations to purchase facilities incurred prior to receipt of approval from Western. Western review and approval of designs and construction work in no way implies that Western is certifying that the designs meet the Contractor's needs.

21. Inspection and Acceptance.

Western shall have the right to inspect the materials and work furnished by the Contractor, its agents, employees, and subcontractors pursuant to the contract. Such inspections shall be at reasonable times at the work site. Any materials or work that Western determines is defective or not in accordance with designs, drawings, and specifications, as approved by Western, shall be replaced or modified, as directed by Western, at the sole expense of the Contractor before the new facilities are energized.

22. As-Built Drawings.

Within a reasonable time, as determined by Western, after the completion of construction and installation of facilities pursuant to the contract, the Contractor shall submit to Western marked as-built prints of all Western drawings affected by changes made pursuant to the contract and reproducible drawings the Contractor has prepared showing facilities of Western. The Contractor's drawings of Western facilities shall use drawing title blocks, drawing numbers, and shall be prepared in accordance with drafting standards all as approved by Western. Western may prepare, revise, or complete said drawings and bill the Contractor if the Contractor fails to provide such drawings to Western within a reasonable time as determined by Western.

23. Equipment Ownership Markers.

23.1. The Contractor shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on the United States right-of-way or in Western substations pursuant to the contract which are owned by the Contractor, by permanently affixing thereto suitable markers clearly identifying the Contractor as the owner of said equipment and facilities.

23.2. If requested by the Contractor, Western shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on the Contractor's right-of-way or in the Contractor's substations pursuant to the contract which are owned by the United States, by permanently affixing thereto suitable markers clearly identifying the United States as the owner of said equipment and facilities.

24. Third-Party Use of Facilities.

The Contractor shall notify Western of any proposed system change relating to the facilities governed by the contract or allowing third-party use of the facilities governed by the contract. If

Western notifies the Contractor that said system change will, as solely determined by Western, adversely affect the operation of Western's system the Contractor shall, at no cost to Western, provide a solution to said adverse effect acceptable to Western.

25. Changes to Western Control Facilities.

If at any time during the term of the contract, Western determines that changes or additions to control, relay, or communications facilities are necessary to maintain the reliability or control of Western's transmission system, and said changes or additions are entirely or partially required because of the Contractor's equipment installed under the contract, such changes or additions shall, after consultation with the Contractor, be made by Western with all costs or a proportionate share of all costs, as determined by Western, to be paid by the Contractor. Western shall notify the Contractor in writing of the necessary changes or additions and the estimated costs to be paid by the Contractor. If the Contractor fails to pay its share of said estimated costs, Western shall have the right, after giving sixty (60) days' written notice to the Contractor, to terminate the applicable facility installation provisions to the contract and require the removal of the Contractor's facilities.

26. Modification of Western Facilities.

Western reserves the right, at any time, to modify its facilities. Western shall keep the Contractor informed of all planned modifications to Western facilities which impact the facilities installation pursuant to the contract. Western shall permit the Contractor to change or modify its facilities, in a manner satisfactory to and at no cost or expense to Western, to retain the facilities interconnection pursuant to the contract. At the Contractor's option, Western shall cooperate with the Contractor in planning alternate arrangements for service which shall be implemented at no cost or expense to Western. The Contractor and Western shall modify the contract, as necessary, to conform to the new facilities arrangements.

27. Transmission Rights.

If the contract involves an installation which sectionalizes a Western transmission line, the Contractor hereby agrees to provide a transmission path to Western across such sectionalizing facilities at no cost or expense to Western. Said transmission path shall be at least equal, in terms of capacity and reliability, to the path in the Western transmission line prior to the installation pursuant to the contract.

28. Construction and Safety Procedures.

28.1. The Contractor hereby acknowledges that it is aware of the hazards inherent in high-voltage electric lines and substations, and hereby assumes full responsibility at all times for the adoption and use of necessary safety measures required to prevent accidental harm to personnel engaged in the construction, inspection, testing, operation, maintenance, replacement, or removal activities of the Contractor pursuant to the contract. The Contractor and the authorized employees, agents, and subcontractors of the Contractor shall comply with all applicable safety laws and building and construction codes, including the provisions of Chapter 1 of the Power System Operations Manual, entitled Power System Switching Procedure, and the Occupational Safety and Health Administration regulations, Title 29 C.F.R. §§ 1910 and 1926, as amended or supplemented. In addition to the safety program required herein, upon request of the United States, the Contractor shall provide sufficient information to demonstrate that the Contractor's safety program is satisfactory to the United States.

28.2. The Contractor and its authorized employees, agents, and subcontractors shall familiarize themselves with the location and character of all the transmission facilities of Western and interconnections of others relating to the work performed by the Contractor under the contract. Prior to starting any construction, installation, or removal work, the Contractor shall submit a plan of procedure to Western which shall indicate the sequence and method of performing the work in a safe manner. No work shall be performed by the Contractor, its employees, agents, or subcontractors until written authorization to proceed is obtained from Western.

28.3. At all times when the Contractor, its employees, agents, or subcontractors are performing activities of any type pursuant to the contract, such activities shall be under supervision of a qualified employee, agent, or subcontractor of the Contractor who shall be authorized to represent the Contractor in all matters pertaining to the activity being performed. The Contractor and Western will keep each other informed of the names of their designated representatives at the site.

28.4. Upon completion of its work, the Contractor shall remove from the vicinity of the right-of-way of the United States all buildings, rubbish, used materials, concrete forms, and other like material belonging to the Contractor or used under the Contractor's direction, and in the event of failure to do so the same may be removed by Western at the expense of the Contractor.

28.5. In the event the Contractor, its employees, agents, or subcontractors fail to comply with any requirement of this Provision, or Provision 21 (Inspection and Acceptance) herein, Western or an authorized representative may issue an order to stop all or any part of the work until such time as the Contractor demonstrates compliance with the provision at issue. The Contractor, its employees, agents, or subcontractors shall make no claim for compensation or damages resulting from such work stoppage.

29. Environmental Compliance.

Facilities installed under the contract by any party shall be constructed, operated, maintained, replaced, transported, and removed subject to compliance with all applicable laws, including but not limited to the National Historic Preservation Act of 1966, 16 U.S.C. §§ 470x-6, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347, the Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544, and the Archaeological Resources Protection Act of 1979, 16 U.S.C. §§ 470aa-470mm, and the regulations and executive orders implementing these laws, as they may be amended or supplemented, as well as any other existing or subsequent applicable laws, regulations, and executive orders.

30. Responsibility for Regulated Materials.

When either party owns equipment containing regulated material located on the other party's substation, switchyard, right-of-way, or other property, the equipment owner shall be responsible for all activities related to regulated materials in such equipment that are necessary to meet the requirements of the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675, the Oil Pollution Act of 1990, 33 U.S.C. §§ 2702-2761, the Clean Water Act, 33 U.S.C. §§ 1251-1387, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-j26, and the regulations and executive orders implementing these laws, as they may be amended or supplemented, and any other existing or subsequent applicable laws, regulations, and executive orders. Each party shall label its equipment containing regulated material in accordance with appropriate laws and regulations. If the party owning the equipment does not perform activities required

under appropriate laws and regulations within the time frame specified therein, the other party may perform or cause to be performed the required activities after notice to and at the sole expense of the party owning the equipment.

**VI. OTHER PROVISIONS.**

31. Authorized Representatives of the Parties.

Each party to the contract, by written notice to the other, shall designate the representative(s) who is (are) authorized to act in its behalf with respect to those matters contained in the contract which are the functions and responsibilities of the authorized representatives of the parties. Each party may change the designation of its authorized representative(s) upon oral notice given to the other, confirmed promptly by written notice.

32. Effect of Section Headings.

Section headings or Provision titles appearing in the contract or these General Power Contract Provisions are inserted for convenience only and shall not be construed as interpretations of text.

33. Operating Guidelines and Procedures.

The parties to the contract may agree upon and put into effect from time to time, such other written guidelines and procedures as may be required in order to establish the methods of operation of the power system to be followed in the performance of the contract.

34. Uncontrollable Forces.

Neither party to the contract shall be considered to be in default in performance of any of its obligations under the contract, except to make payment as specified in Provision 13 (Billing and Payment) herein, when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" means any cause beyond the control of the party affected, including but not restricted to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Either party rendered unable to fulfill any of its obligations under the contract by reason of an uncontrollable force shall give prompt written notice of such fact to the other party and shall exercise due diligence to remove such inability with all reasonable dispatch.

35. Liability.

35.1. The Contractor hereby agrees to indemnify and hold harmless the United States, 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 the Contractors', its employees', agents', or subcontractors' construction, operation, maintenance, or replacement activities under the contract.

35.2. The United States is liable only for negligence on the part of its officers and employees in accordance with the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1346(c), 2401(b), 2402, 2671, 2672, 2674- 2680, as amended or supplemented.

36. Cooperation of Contracting Parties.

If, in the operation and maintenance of their respective power systems or electrical equipment and the utilization thereof for the purposes of the contract, it becomes necessary by reason of any emergency or extraordinary condition for either party to request the other to furnish personnel, materials, tools, and equipment for the accomplishment thereof, the party so requested shall cooperate with the other and render such assistance as the party so requested may determine to be available. The party making such request, upon receipt of properly itemized bills from the other party, shall reimburse the party rendering such assistance for all costs properly and reasonably incurred by it in such performance, including administrative and general expenses, such costs to be determined on the basis of current charges or rates used in its own operations by the party rendering assistance. Issuance and payment of bills for services provided by Western shall be in accordance with Provisions 13 (Billing and Payment) and 14 (Nonpayment of Bills in Full When Due) herein. Western shall pay bills issued by the Contractor for services provided as soon as the necessary vouchers can be prepared which shall normally be within twenty (20) days.

37. Transfer of Interest in Contract or Change in Preference Status.

37.1. No voluntary transfer of the contract or of the rights of the Contractor under the contract shall be made without the prior written approval of the Administrator of Western. Any voluntary transfer of the contract or of the rights of the Contractor under the contract made without the prior written approval of the Administrator of Western may result in the termination of the contract; Provided, That the written approval of the Administrator shall not be unreasonably withheld; Provided further, That if the Contractor operates a project financed in whole or in part by the Rural Utilities Service, the Contractor may transfer or assign its interest in the contract to the Rural Utilities Service or any other department or agency of the Federal Government without such prior written approval; Provided further, That any successor to or assignee of the rights of the Contractor, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of the contract to the same extent as though such successor or assignee were the original Contractor under the contract; and, Provided further, That the execution of a mortgage or trust deed, or judicial or foreclosure sales made thereunder, shall not be deemed voluntary transfers within the meaning of this Provision.

37.2. The Contractor shall maintain its status as an entity eligible for preference in Western's sale of Federal power pursuant to Reclamation law, as amended and supplemented.

37.3. Western shall give the Contractor written notice of Western's proposed determination that the Contractor has violated Provision 37.1 and Western's proposed action in response to the violation.

37.4. The Contractor shall have 120 days after receipt of Western's notice provided under Provision 37.3 to submit a written response to Western. The Contractor may also make an oral presentation to the Administrator during this 120-day period.

37.5. At any time during this process, the Contractor and Western may agree upon corrective action to resolve Western's proposed determination that the Contractor is in violation of Provision 37.1.

37.6. Within 30 days of receipt of the Contractor's written response provided under Provision 37.4, Western will notify the Contractor in writing of its final decision. The Administrator's written notice will include the intended action, the effective date thereof, and the reasons for taking the intended action. Implementation of the Administrator's action shall take place no earlier than 60 days from the Contractor's receipt of such notice.

37.7. Any successor to Western shall be subject to all the provisions and conditions of the contract to the same extent as though such successor were an original signatory to the contract.

37.8. Nothing in this Provision shall preclude any right to judicial review available to the Contractor under Federal law.

38. Choice of Law and Forum.

38.1. Federal law shall control the obligations and procedures established by this contract and the performance and enforcement thereof. The forum for litigation arising from this contract shall exclusively be a Federal court of the United States, unless the parties agree to pursue alternative dispute resolution.

39. Waivers.

Any waivers at any time by either party to the contract of its rights with respect to a default or any other matter arising under or in connection with the contract shall not be deemed a waiver with respect to any subsequent default or matter.

40. Notices.

Any notice, demand, or request specifically required by the contract or these Provisions to be in writing shall be considered properly given when delivered in person or sent by postage prepaid registered or certified mail, commercial delivery service, facsimile, electronic, prepaid telegram, or by other means with prior agreement of the parties, to each party's authorized representative at the principal offices of the party. The designation of the person to be notified may be changed at any time by similar notice. Where facsimile or electronic means are utilized for any communication covered by this Provision, the sending party shall keep a contemporaneous record of such communications and shall verify receipt by the other party.

41. Contingent Upon Appropriations and Authorization.

41.1. 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.

41.2. In order to receive and expend funds advanced from the Contractor necessary for the continued performance of the obligations of the United States under the contract, additional authorization may be required. In case such authorization is not received, the Contractor hereby releases the United States from those contractual obligations and from all liability due to the lack of such authorization.



42. Covenant Against Contingent Fees.

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, Western shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

43. Contract Work Hours and Safety Standards.

The contract, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. § 3701, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 3701-3708, as amended or supplemented, and to regulations promulgated by the Secretary of Labor pursuant to the Act.

44. Equal Opportunity Employment Practices.

Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), as amended or supplemented, which provides, among other things, that the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated herein by reference the same as if the specific language had been written into the contract, except that Indian Tribes and tribal organizations may apply Indian preference to the extent permitted by Federal law.

45. Use of Convict Labor.

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing the contract except as provided by 18 U.S.C. § 3622(c), as amended or supplemented, and Executive Order No. 11755, 39 Fed. Reg. 779 (1973), as amended or supplemented.