

ORDINANCE NO. 054, 2019  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING AN AMENDED AND RESTATED CONTRACT  
WITH PLATTE RIVER POWER AUTHORITY FOR THE  
SUPPLY OF ELECTRIC POWER AND ENERGY

WHEREAS, the City is one of four member municipalities that entered into an organic contract establishing Platte River Power Authority ("Platte River"); and

WHEREAS, the first such contract was entered into in 1975, and the contract was last amended by the execution of an Amended and Restated Organic Contract Establishing Platte River Power Authority as a Separate Governmental Entity dated September 1, 2010 (the "Existing Organic Contract"), as approved by City Council on June 1, 2010, by Ordinance No. 061, 2010; and

WHEREAS, the parties recently negotiated a proposed, updated agreement entitled "Amended and Restated Organic Contract Establishing Platte River Power Authority as a Separate Governmental Entity" (the "Updated Organic Contract"), the purpose of which is to replace and supersede the Existing Organic Contract; and

WHEREAS, the City Council by separate ordinance has approved the Updated Organic Contract; and

WHEREAS, on February 22, 1980, the City and Platte River Power Authority ("Platte River") entered into a Transmission Facilities Agreement (the "Facilities Agreement") to establish the parties' rights and obligations related to their respective electric system facilities and to provide for shared use or lease of certain specified facilities; and

WHEREAS, on March 31, 1980, the City also entered into a Contract for the Supply of Electric Power and Energy (the "Original Supply Contract") with Platte River which established the terms and conditions of the City's purchase of electric power and energy from Platte River; and

WHEREAS, on July 21, 1998, the City Council approved an amendment to the Original Supply Contract extending its termination date from December 31, 2020, to December 31, 2040 (the "1998 Supply Contract Amendment"); and

WHEREAS, on June 1, 2010, the City Council adopted Ordinance No. 062, 2010, approving an updated "Amended and Restated Contract for the Supply of Electric Power and Energy" (the "Existing Supply Contract") with Platte River, which replaced and superseded the Facilities Agreement and the 1998 Supply Contract, and extended the expiration date to December 31, 2050; and

WHEREAS, the City and Platte River recently negotiated a further updated "Amended and Restated Contract for the Supply of Electric Power and Energy" (the "Updated Supply Contract"),

a copy of which is on file with the City Clerk, dated February 20, 2019, the purpose of which is to replace and supersede the Existing Supply Contract; and

WHEREAS, under the proposed Updated Supply Contract, Platte River will continue to sell and deliver to the City, and the City will continue to purchase and receive from Platte River, all electric power and energy that the City requires for the operation of its municipal electric system, and the City may generate power and energy for its own use in City facilities from any new generation resource(s) owned and operated by the City provided that the City's total rated capacity does not exceed 1,000 kilowatts or one percent of the peak load of the City, whichever is greater; and

WHEREAS, in addition, the Updated Supply Contract includes accommodation for third-party solar providers of on-site solar generation, relocation of the metering point for wholesale power deliveries, and restricts future bond financing covenants, which will improve options available to the City to pursue new renewable technologies; and

WHEREAS, the Updated Supply Contract also amends the term of the Existing Supply Contract so as to extend its expiration date by ten years to December 31, 2060; and

WHEREAS, on March 14, 2019, the Energy Board reviewed the Updated Supply Contract and recommended the City Council authorize approval of the Contract as amended; and

WHEREAS, the Updated Supply Contract is also being considered by the Council acting ex officio as the board of the Fort Collins Electric Utility Enterprise Board by separate ordinance adopted in the same manner as an ordinance of Council, including but not limited to execution by the Mayor as president and the City Clerk as secretary of the Enterprise.

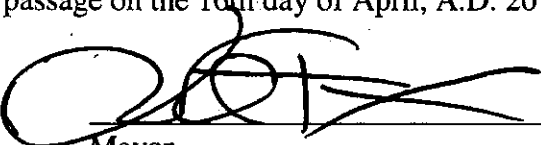
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

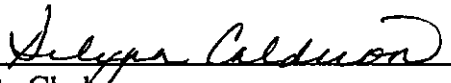
Section 2. That the City Council hereby finds that it is in the best interests of the City to replace and supersede the Existing Supply Contract with the Updated Supply Contract.

Section 3. That the Updated Supply Contract is hereby approved, and the Mayor is hereby authorized and directed to execute the same on behalf of the City in substantially the form on file in the office of the City Clerk and as attached hereto as Exhibit "A," provided that the Electric Utility Enterprise is added as a party to the same prior to signing.

Introduced, considered favorably on first reading, and ordered published this 19th day of March, A.D. 2019, and to be presented for final passage on the 16th day of April, A.D. 2019.

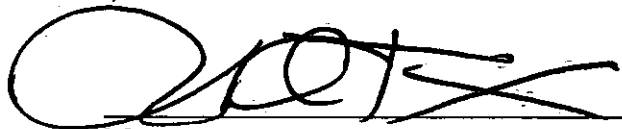
  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk



Passed and adopted on final reading on the 16th day of April, A.D. 2019.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk



**AMENDED CONTRACT FOR THE SUPPLY OF ELECTRIC POWER AND ENERGY**

This contract, made this \_\_\_\_ day of \_\_\_\_\_, 2019, between PLATTE RIVER POWER AUTHORITY, a political subdivision organized and existing under and by virtue of the laws of the State of Colorado (hereinafter called "Platte River") and the CITY OF FORT COLLINS, COLORADO, a municipal corporation of the State of Colorado, by and through its City Council and Electric Enterprise Board (hereinafter called "Fort Collins.")

WITNESSETH:

WHEREAS, Platte River was formed by Estes Park, Fort Collins, Longmont, and Loveland (hereinafter collectively called "Municipalities") in order to provide the wholesale power and energy requirements of the Municipalities in a reliable, cost-effective, and environmentally responsible manner; and

WHEREAS, Platte River, owns, operates, and maintains electric generating facilities, transmission lines, substations, and related facilities for the purpose of supplying electric power and energy to the electric systems owned and operated by the Municipalities for resale; and

WHEREAS, Platte River has heretofore entered into or will enter into agreements for the sale of electric power and energy similar in form to this Agreement with the cities of Estes Park, Longmont, and Loveland; and

WHEREAS, Fort Collins desires to purchase electric power and energy from Platte River on the terms and conditions herein set forth;

WHEREAS, through this Agreement the parties acknowledge that the electric industry is evolving from an industry dominated by central station power to one that will likely employ increasing amounts of distributed generation resources; and

WHEREAS, the Platte River Board of Directors approved a Resource Diversification Policy with the goal of becoming 100% non-carbon by 2030 and in doing so the Board recognized that distributed generation will be needed to achieve this goal; and

WHEREAS, intermittent resources must be managed to ensure continued system reliability; and

WHEREAS, Platte River will equitably manage the impact of adding and firming intermittent resources amongst the four communities to ensure continued financial sustainability; and

WHEREAS, the parties recognize that the exceptions created to the all-requirements provision set forth in Article 1(a) are not intended to be the only means by which the parties either singularly or in coordination work toward meeting the goal of the Resource Diversification Policy; and

WHEREAS, the parties intend through the expanded covenant contained in Article 3(c) to meet routinely to review new technologies and business models that may merit recognition through specific amendments to this Agreement; and

WHEREAS, in order to meet the goal of the Resource Diversification Policy the parties are committed to use this incremental amendment process to explore expanding opportunities for distributed generation resources that likely become an increasingly important component of our future resource mix and to amend this agreement when appropriate to accommodate technologies and business models that are not contemplated today; and

WHEREAS, in order to accomplish amendments identified as suitable exceptions to the all-requirements provisions set forth in Article 1(a) Platte River recognizes that it may be necessary in future financings to modify bond covenant restrictions.

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the Parties hereto agree as follows:

Article 1: Sale and Purchase of Electric Power and Energy

(a) Platte River shall sell and deliver to Fort Collins and Fort Collins shall purchase and receive from Platte River all electric power and energy which Fort Collins shall require for the operation of its municipal electric system to the extent that Platte River shall have such power and energy available; provided, however, that (1) Fort Collins shall have the right to continue to generate its own power and energy to the extent of the capacity of its generating facilities in service on September 5, 1974 and may also generate power and energy for its own use from any new generation resource(s) owned and operated by Fort Collins provided that the total rated capacity of all such new generation is no greater than 1,000 kW or one percent of the peak load of Fort Collins, whichever is greater, provided further that if Fort Collins develops new generation resources of a total rated capacity as set forth above Platte River commits that it will meet with Fort Collins to discuss in good faith an increase in the total rated capacity limit, and (2) Fort Collins shall not be in violation of the all requirements purchase obligation herein when it purchases power from net metered customers, provided that for customers who have entered into agreements with entities that own and operate solar generation located on the customer's

property size the solar generation to supply no more than one hundred and twenty percent (120%) of the annual average consumption of electricity by the customer at that site.

(b) Subject to the provisions of Article 2(a), Fort Collins hereby binds itself to take and pay for all power and energy that is generated, purchased, or otherwise obtained by Platte River, and is furnished to Fort Collins for resale pursuant to Article 1(a) hereof, said payment to be made at the rates set forth in the Tariff Schedules of Platte River in effect at the time the power and energy is furnished to Fort Collins.

#### Article 2: Rate for Power and Energy

(a) Fort Collins shall pay Platte River for all electric power and energy furnished hereunder at the rates and on the terms and conditions as provided in the Platte River Tariff Schedules; provided, however, that notwithstanding any other provision of this Agreement, the obligation of Fort Collins to pay Platte River for all electric power and energy furnished hereunder shall be, and is, a special obligation of Fort Collins payable solely from revenues to be received by Fort Collins from the sale of electric power and energy to its electric utility customers during the term hereof and is not a lien, charge, or liability against Fort Collins or against any property or funds of Fort Collins other than revenues to be received by Fort Collins from the sale of electric power and energy to its electric utility customers during the term hereof, and the obligation to pay Platte River for all electric power and energy furnished hereunder does not constitute a debt, liability, or obligation of Fort Collins other than from its revenues to be received from the sale of electric power and energy to its electric utility customers during the term hereof, and Fort Collins is not otherwise obligated to pay such obligation.

(b) The Board of Directors of Platte River at such intervals as it shall deem appropriate, but in any event not less frequently than once in each calendar year, shall review the rates for electric power and energy furnished hereunder and under similar agreements with the other Municipalities and, if necessary, shall revise such rates to produce revenues which shall be sufficient, but only sufficient, with the revenues of Platte River from all other sources,

- (i) to meet the cost of operation and maintenance (including, without limitation, fuel, replacements, insurance, taxes, fees, and administrative and general overhead expense) of the electric generating plants, transmission system, and related facilities of Platte River;
- (ii) to meet the cost of any power and energy purchased for resale hereunder by Platte River and the cost of transmission service;

- (iii) to make payments of principal and interest on all indebtedness and revenue bonds of Platte River and provide an earnings margin adequate to enable Platte River to obtain revenue bond financing on favorable terms; and
- (iv) to provide for the establishment and maintenance of reasonable reserves.

(c) Platte River shall cause a notice in writing to be given to each Municipality to which it furnishes electric power and energy, which notice shall set out each revision of the rates with the effective date thereof, which shall be not less than thirty (30) days after the date of the notice. All rate adjustments shall apply equally to all Municipalities to which Platte River furnishes electric power and energy, unless otherwise agreed upon, and shall not be discriminatory. Fort Collins agrees that the rates from time to time established by the Board of Directors of Platte River shall be deemed to be substituted for the rates presently contained in the Tariff Schedules and agrees to pay for electric power and energy furnished to it hereunder after the effective date of any revisions to the Tariff Schedules at such revised rates.

#### Article 3: Covenants of Platte River

(a) Platte River shall use reasonable diligence to furnish a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall fail, or be interrupted, or become defective through uncontrollable forces, as defined herein, Platte River shall not be liable for any claim or damages caused thereby.

(b) After first satisfying the electric power and energy requirements of all Municipalities to which it furnishes electric power and energy, Platte River may, in its sole discretion, market and dispose of any surplus electric power and energy which it owns or produces or which Platte River is obligated by contract to purchase, under the most advantageous terms and conditions obtainable.

(c) Platte River shall carry out the planning, design, construction, and operating decisions associated with the performance of its obligations under this Agreement in an environmentally responsible manner. This includes, but is not limited to, scheduling meetings with Fort Collins at least every two years to review new technologies and business models that may serve to increase the penetration of distributed generation and efficiency technologies. As appropriate the parties will amend this Agreement to allow such new technologies and business models to operate within the retail service territory of Fort Collins.

#### Article 4: Covenants of Fort Collins

(a) Fort Collins agrees to maintain rates for electric power and energy furnished to its electric utility customers which will, after payment of all of Fort Collins' costs of operation and maintenance (including, without limitation, replacements, insurance, administrative and general overhead expense), return to Fort Collins sufficient revenue to meet its obligations to Platte River hereunder.

(b) Fort Collins shall not sell at wholesale any of the electric energy delivered to it hereunder to any of its customers for resale by that customer, unless such resale is specifically approved in writing by Platte River.

(c) Fort Collins acknowledges that it is familiar with the provision of Platte River's contract with the Western Area Power Administration, which requires, as a condition of the purchase of federally generated power, that the Municipalities comply with certain provisions of the "General Power Contract Provisions," which is attached hereto as Attachment A. Fort Collins acknowledges its compliance obligations under the General Power Contract Provisions, as that document presently exists and as it may be modified in the future.

#### Article 5: Conditions of Delivery of Power and Energy

(a) The electric power and energy to be furnished by Platte River shall be alternating current, sixty (60) hertz, three-phase, subject to conditions of delivery and measurement as hereinafter provided and in the Tariff Schedules.

(b) Responsibilities for the facilities through which electric power and energy is delivered are set forth in Attachment B of this Agreement, attached hereto and made a part hereof.

(c) Fort Collins shall make and pay for all final connections between its system and the system owned by, or available to, Platte River at the points of delivery agreed upon.

(d) Unless otherwise agreed, Fort Collins shall install, own, and maintain the necessary substation equipment at the points of delivery from the system of, or available to, Platte River and shall install, own, and maintain switching and protective equipment of adequate design and sufficient capacity beyond such points of delivery to enable Fort Collins to take and use the electric power and energy supplied hereunder without hazard to such system.

(e) To provide adequate service to Fort Collins, Platte River agrees to increase the capacity of an existing transmission point of delivery, or to establish a new transmission point of delivery at a mutually agreeable location, of a design capacity of not less than 20,000 kVa maximum nameplate rating at 55° C. rise, and in accordance with this Agreement.



(f) Fort Collins shall give Platte River at least two years written notice of the need to increase the capacity of an existing transmission point of delivery or the need for a new transmission point of delivery. If new transmission is required, Fort Collins shall give Platte River at least four years written notice. The notice shall specify the amount of additional or new capacity, the new transmission required, and the desired initial date of its operation. Platte River shall, within sixty (60) days after receipt of such notice, and on the basis of the best information available to Platte River from system plans and load projections for Fort Collins, inform Fort Collins in writing of Platte River's plans and schedules with respect to the supply of the additional capacity requested by Fort Collins, and shall thereafter keep Fort Collins informed of Platte River's progress in supplying such additional capacity. Any written notice requesting additional capacity at an existing point of delivery or the establishment of a new point of delivery shall provide to Platte River any and all authority necessary for its facilities to occupy the property of Fort Collins during the period in which that point of delivery is used by Platte River for the delivery of power and energy.

(g) If Fort Collins requires the construction of a 115 kV or 230 kV transmission line for additional service where such line is a tap or radial line over which energy can flow in only one direction, as distinguished from a system line over which energy can flow in either direction, then ownership, operation, and maintenance of such 115 kV or 230 kV transmission line will be undertaken by Platte River pursuant to a separate agreement with Fort Collins which provides for an appropriate sharing of the annual costs of ownership and operations of such line for as long as such energy flow and delivery conditions prevail.

#### Article 6: Consultation on System Planning

(a) At least once each year, on or before July 1, Platte River shall consult Fort Collins concerning its requirements for transmission facilities to effect delivery of power and energy by Platte River. The date for such annual consultation shall be set by agreement of the Parties.

(b) At least thirty (30) days prior to the date of such annual consultation, Fort Collins shall provide Platte River with two (2) copies of its latest estimate of requirements for delivery of power and energy covering a future period of ten (10) years. Platte River shall review Fort Collins's annual estimates and shall consider them in preparing Platte River's annual system plan. Following Platte River's annual consultations on delivery requirements with all Municipalities, Platte River shall prepare an annual system plan for the delivery of power and energy to all Municipalities covering a future period of ten (10) years. Decisions regarding the construction of

any transmission and delivery facilities by Platte River primarily to supply Fort Collins, will take into account Fort Collins' long-range distribution requirements and costs and the long-range costs and benefits of alternative service plans. Platte River's annual system plan shall include appropriate load flow and stability studies and a copy thereof shall be furnished to Fort Collins if requested.

#### Article 7: Measurement of Power and Energy

(a) Metering equipment shall be furnished, installed, and maintained by Platte River at each point of delivery to Fort Collins at the high voltage side of the transforming equipment or at such other points as agreed upon by the Parties.

(b) Loss adjustments for high voltage side or remote metering shall be as specified in the Tariff Schedule or as otherwise agreed by the Parties.

#### Article 8: Meter Readings and Payment of Bills

(a) Platte River shall read meters and invoice Fort Collins for power and energy furnished hereunder at approximately monthly intervals. Such invoices shall be due and payable to Platte River within fifteen (15) days from date of issuance and shall become delinquent thereafter.

(b) If Fort Collins' monthly bill becomes delinquent, late charges at the rate of a one and one-half percent (1½ %) per month of the unpaid balance shall be added, and if such bill is delinquent for a period of fifteen (15) days or longer, Platte River may discontinue delivery of electric power and energy not less than fifteen (15) days following written notice to Fort Collins.

#### Article 9: Meter Testing and Billing Adjustment

(a) Platte River shall test and calibrate meters by comparison with accurate standards at intervals of twelve (12) months, and shall also make special meter tests at any time at Fort Collins' request. The cost of all tests shall be borne by Platte River; provided, however, that if any special meter test made at Fort Collins' request shall disclose that the meters are recording accurately, Fort Collins shall reimburse Platte River for the cost of such test. Meters registering within two percent (2%) above or below normal shall be deemed to be accurate.

(b) The readings of any meter which are disclosed by test to be inaccurate shall be corrected from the beginning of the monthly billing period immediately preceding the billing period during which the test was made; provided, that no correction shall be made for a longer period

than such inaccuracy is determined by Platte River to have existed. If a meter fails to register, the electric power and energy delivered during such period of failure shall, for billing purposes, be estimated by Platte River from the best information available.

(c) Platte River shall notify Fort Collins in advance of any meter reading or test so that Fort Collins' representative may be present at such meter reading or test.

#### Article 10: Right of Occupancy and Access

Both Parties shall have a revocable license to occupy the property of the other Party necessary to deliver and receive power and energy under this Agreement as described in Attachment B. Duly authorized representatives of either Party shall be permitted to enter the premises of the other Party at all reasonable times in order to carry out the provisions of this Agreement and those described in Attachment B.

#### Article 11: Uncontrollable Forces

Neither Party to this Agreement shall be considered to be in default in performance of any of its obligations, except the agreement to make payment, 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 inaction by, or failure to obtain the necessary authorization or approvals from, any governmental agency or authority, which by the 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 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 this Agreement by reason of an uncontrollable force shall give prompt written notice of such fact, if reasonable to do so, to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

#### Article 12: Enforceability

The Parties hereto recognize that there are legal constraints imposed upon them by the constitution, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon them by their respective governing statutes, charters, ordinances, rules and

regulations, and that, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall either of the Parties exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

Article 13: Term of Agreement

(a) This Agreement shall become effective when executed by both Parties, and shall amend and supersede the existing Contract for the Supply of Electric Power and Energy between Platte River and Fort Collins, dated September 1, 2010. This Agreement shall remain in effect until December 31, 2060, and thereafter until terminated by either Party following not less than twelve (12) months written notice to the other Party of its intention to terminate.

Article 14: Notices

Any formal notice provided for in this Agreement, and the payment of monies due, shall be deemed properly served, given or made, if delivered in person or sent by regular mail to the persons specified below:

For Platte River:

General Manager  
Platte River Power Authority  
2000 East Horsetooth Road  
Fort Collins, Colorado 80525

For Fort Collins:

Utilities General Manager  
City of Fort Collins  
P. O. Box 580  
Fort Collins, Colorado 80522

Article 15: Severability

In the event that any of the terms, covenants, or conditions of this Agreement or their application shall be held invalid as to any person or circumstance by any Court having jurisdiction, the remainder of this Agreement and the application of its terms, covenants, or conditions to such persons or circumstances shall not be affected thereby.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first above written.

PLATTE RIVER POWER AUTHORITY:

By: \_\_\_\_\_  
General Manager

ATTEST:

By: \_\_\_\_\_  
Secretary

CITY OF FORT COLLINS:

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Assistant City Attorney

FORT COLLINS ELECTRIC UTILITY ENTERPRISE:

By: \_\_\_\_\_  
Enterprise Board President

ATTEST:

By: \_\_\_\_\_  
Enterprise Board Secretary

ATTACHMENT A

Effective September 1, 2007

WESTERN AREA POWER ADMINISTRATION  
GENERAL POWER CONTRACT PROVISIONS

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**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 the 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.

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. § 329, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 327-334, 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.

## **Attachment B**

### **Substation Cost and Maintenance Responsibility**

**And**

### **Lease of 115kV Facilities**

The following describes the cost and maintenance responsibilities for Fort Collins and Platte River at the existing Harmony, Linden Tech, Richard Lake, Portner, and Drake Substations. This description will also apply to any future substations that may be constructed by Fort Collins. If any special arrangements are required for a new substation different from the understanding described below, it will be documented in a separate letter agreement between the Fort Collins and Platte River and attached hereto.

Fort Collins will furnish, own, and maintain at its expense the following items in each substation owned by Fort Collins:

- The substation site with sufficient space for both the Fort Collins and Platte River equipment
- Grading and surfacing within the fenced or walled area
- Access right-of-way and roads
- Perimeter substation fence or wall
- Landscaping and maintenance of any grounds outside the fenced or walled area
- The 230 or 115kV/13.8kV transformers, switchgear, feeder circuits, associated foundations and oil containment structures, duct banks, conduits, and all cabling, relays, and controls required to operate such equipment
- The Fort Collins switchgear room in a common Fort Collins/Platte River switchgear/control building or separate building, whichever is appropriate
- A remote terminal unit (RTU), for use to transmit substation information to Fort Collins
- The DC power supply system and associated equipment or ½ the cost of a DC system shared with Platte River.
- Substation site electric service (equipment, power and energy)
- Substation yard lighting
- Substation yard below grade grounding system

Platte River will furnish, own, and maintain at its expense the following items in each substation owned by the Fort Collins:

- All transmission equipment required at the appropriate voltage class to deliver electric capacity and energy to Fort Collins's facilities including the transmission line transition structures, breakers, switches, bus system, relays, meters and associated controls
- All foundations required for the Platte River equipment listed above
- The Platte River control room in a combined Fort Collins/Platte River switchgear/control building, or the cost of a separate control building, whichever is appropriate
- Communication connections for Power System Operations use by both Fort Collins and Platte River
- A remote terminal unit (RTU), for use to transmit substation information to and Platte River

- Weed control

Fort Collins and Platte River will share equally the cost of any substation security deemed by both parties to be appropriate for the location of the substation.

### **Lease of 115kV Facilities:**

**Background:** In the Transmission Facilities Agreement dated February 22, 1980, Fort Collins leased multiple transmission and substation facilities to Platte River. With that lease Platte River assumed responsibility for 115kV substation facilities at the Timberline Park, Drake, Overland Trail, and Power Plant Substations and the 115kV transmission lines from Poudre Tap to Power Plant, WAPA Line to Drake Substation, and the 115kV line south of Timberline Park Substation to Drake Road. Since 1980 the Overland Trail and Power Plant Substations and the Poudre Tap to Power Plant transmission line have been decommissioned and are no longer in service and the WAPA line connection along Overland Trail is now connected at Dixon Creek Substation. Since 1980 new substations have been added to the Fort Collins system whose names are Harmony, Linden Tech, Richard Lake, and Fort Collins has added distribution facilities at Platte River's Dixon Creek Substation and Fort Collins' Timberline Substation.

**Continuation of Lease:** Fort Collins agrees to continue the lease of the facilities ("Leased Facilities") on the following list to Platte River through the term of this Agreement or until such facility is permanently removed from service or replaced. Platte River shall continue to have the right to use the Leased Facility in whatever manner it shall determine to be the most effective to meet its obligations under this Agreement and the local needs of Fort Collins and to make whatever modifications, improvements, repairs and replacements it shall determine to be necessary to provide reliable service. Platte River shall not permit any lien or encumbrance to attach to the Leased Facility and shall deliver them up to Fort Collins at the termination of this Agreement.

The following items comprise the Leased Facilities:

#### Land and Land Rights

All land, land rights, and easements on which the following facilities are located:

- Dixon Creek Substation to Drake Substation 115kV transmission line.
- Timberline Park-Drake 115kV transmission line.
- Timberline Park Substation.
- Fort Collins will continue to provide the access road to the Timberline Park Substation as well as landscaping and maintenance of the grounds outside the substation fence.
- The land and land rights leased at Timberline Park Substation are shown on Exhibit 1 attached hereto. The City of Fort Collins distribution facilities are located in the cross-hatched area shown on the diagram.

#### Substation Equipment

115kV breakers, busses, switches, insulators, meters, relays, control panels, structural steel, foundations, and miscellaneous 115kV support equipment at the following substations, which have not been replaced since February 22, 1980:

- Timberline Park Substation
- Drake Substation

### Transmission Lines

All poles, conductors, and support equipment required for operation of the following transmission lines:

- Dixon Creek-Drake 115kV transmission line
- Timberline Park-Drake 115kV transmission line

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