

AGREEMENT NO. 20-RMR-3182

BETWEEN

INCORPORATED COUNTY OF LOS ALAMOS-DEPARTMENT OF PUBLIC UTILITIES

AND

UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
ROCKY MOUNTAIN REGION

WESTERN AREA COLORADO MISSOURI BALANCING AUTHORITY

FOR

BALANCING AUTHORITY SERVICES

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1. PREAMBLE: This Balancing Authority Services Agreement (Agreement) is made this \_\_\_\_ day of \_\_\_\_\_, 2020 (Effective Date), pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388); August 4, 1939, (53 Stat. 1187); December 22, 1944 (58 Stat. 887); April 11, 1956 (70 Stat. 105); August 16, 1962, (76 Stat. 389); August 4, 1977 (91 Stat. 565); and Acts amendatory or supplementary to the foregoing Acts; between the UNITED STATES OF AMERICA, Department of Energy, acting by and through the Administrator, WESTERN AREA POWER ADMINISTRATION (WAPA) and INCORPORATED COUNTY OF LOS ALAMOS-DEPARTMENT OF PUBLIC UTILITIES (Los Alamos or Customer), a corporation organized and existing under the laws of the State of New Mexico, its successors and assigns; each sometimes individually called Party and both collectively called Parties.

2. EXPLANATORY RECITALS:

2.1 WAPA's Rocky Mountain Region (RMR) operates the Western Area Colorado Missouri Balancing Authority (WACM).

2.2 As a Balancing Authority (BA), WACM is the entity responsible for evaluating and integrating short-term resource plans and maintaining Load-interchange-generation balance within its Balancing Authority Area (BAA) and supporting real-time interconnection frequency.

2.3 Customer (1) is operationally responsible for Load and/or generator resources and/or (2) operates a transmission system; and/or (3) is a Transmission Owner and/or (4) is a Transmission Service Provider and/or (5) is a Transmission Provider, in the WACM BAA. WACM, thus, requires Customer to execute this Agreement to set forth the terms and conditions of Balancing Authority services and Customer's obligations to WACM.

3. DEFINITIONS: For purposes of this Agreement, capitalized terms defined in this Section shall have the meaning set forth below whether used in the singular or plural. In addition to the definitions provided below, definitions used in the NERC Glossary of Terms Used in Reliability Standards (NERC Glossary), as supplemented or amended, are included by reference. If there is a conflict

between the definitions provided below and the definitions used in NERC Reliability Standards Glossary, the definitions set forth herein shall prevail:

- 3.1 Ancillary Services: As defined in Section 8.1.
- 3.2 Balancing Authority (BA): As defined in the NERC Glossary.
- 3.3 BA Area (BAA): As defined in the NERC Glossary.
- 3.4 BA Real Power Losses Service: Defined in WAPA Rate Schedule L-AS7.
- 3.5 BA Services: The services which include, but are not limited to, the BA Real Power Losses Service and Ancillary Services provided by WACM, as specified in this Agreement.
- 3.6 Business Practice: WACM's rules, standards, and practices that are published on its OASIS, or subsequent WAPA website, and (i) relate to BA Services, (ii) are not subject to a North American Energy Standards Board (NAESB) copyright restriction, and (iii) are not otherwise included in this Agreement.

- 3.7 Colorado River Colorado Missouri Transmission System (CRCM): RMR, based in Loveland, Colorado, operates and maintains the WAPA transmission facilities in Arizona, Colorado, New Mexico, Utah, and Wyoming which were constructed to market and deliver power from the Salt Lake City Area Integrated Projects under the TSP code CRCM.
- 3.8 Energy Imbalance Service: Defined in WAPA Rate Schedule L-AS4.
- 3.9 Enforcement Authority: FERC, Electric Reliability Organization (ERO), or Regional Entities with enforcement authority pursuant to a delegation order from an ERO or FERC for the purpose of proposing and enforcing reliability standards.
- 3.10 Events of Default: Defined in Section 6 of Exhibit H.
- 3.11 FERC: Federal Energy Regulatory Commission or successor organization(s).
- 3.12 Generator Imbalance Service: Defined in WAPA Rate Schedule L-AS9.
- 3.13 Good Utility Practice: Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the

exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act Section 215(a)(4).

- 3.14 Independent System Operator (ISO): As defined in 16 U.S.C. § 796(28).
- 3.15 Load: Defined in the NERC Glossary.
- 3.16 Loveland Area Projects Transmission (LAPT): RMR, based in Loveland, Colorado, operates and maintains WAPA's transmission facilities in Colorado, Wyoming, Montana, and Nebraska, which were constructed to market and deliver power from the Loveland Area Projects under the TSP code LAPT.
- 3.17 Metered Subsystem: A subsystem within a BA that balances its resources and Loads through generation capacity and energy schedules and is defined by meters that measure net energy transfers into and out of their

electric subsystem boundary. This arrangement is sometimes referred to as a boundary metered subsystem or a bubble.

- 3.18 NERC: North American Electric Reliability Corporation or successor organization(s).
- 3.19 Net Energy for Load (NEL): Means net generation on or interconnected to an electric system plus energy received from others less energy delivered to others through interchange and is measured in MWh/year. It includes system losses but excludes energy required for storage of energy at energy storage facilities.
- 3.20 Open Access Same-time Information System (OASIS): Internet-based tool for sharing information on transmission prices and product availability.
- 3.21 Point(s) of Interconnection: Metering point(s) where the Customer's transmission or distribution system, load and generation facilities (including behind the meter generation) that are/is the Customer's responsibility within the WACM BA, require(s) certain BA Services, as shown in Exhibit A.
- 3.22 Reactive Supply and Voltage Control from Generation or Other Sources Service: Defined in WAPA Rate Schedule L-AS2.



- 3.23 Regional Entity: A regional entity as defined under Section 215(e)(4) of the Federal Power Act, authorized to enforce reliability standards for NERC under a delegation agreement approved by FERC.
- 3.24 Regional Transmission Organization (RTO): As defined in 16 U.S.C. § 796(27).
- 3.25 Regulation and Frequency Response Service: Defined in WAPA Rate Schedule L-AS3.
- 3.26 Reliability Coordinator (RC): Defined in the NERC Glossary.
- 3.27 Reserve Energy: Defined in the WACM Sub-Entity Reserve Sharing Agreement, or, if Customer is not a party to the WACM Sub-Entity Reserve Sharing Agreement, Reserve Energy is as defined in WACM's Business Practices.
- 3.28 Reserve Sharing Group (RSG): A group whose members consist of two or more BAs that collectively maintain, allocate, and supply operating reserves required for each BA's use in recovering from contingencies within the group. Scheduling energy from an Adjacent Balancing Authority to aid

recovery need not constitute reserve sharing provided the transaction is ramped in over a period the supplying party could reasonably be expected to load generation in (e.g., ten minutes). If the transaction is ramped in quicker (e.g., between zero and ten minutes) then, for the purposes of disturbance control performance, the areas become a RSG. Examples are the Northwest Power Pool (NWPP) and the Southwest Reserve Sharing Group (SRSG).

- 3.29 Scheduling, System Control, and Dispatch Service: Defined in WAPA Rate Schedule L-AS1.
- 3.30 Sensitive Information: Defined in Exhibit G.
- 3.31 Spinning Reserve Service: Defined in WAPA Rate Schedule L-AS5.
- 3.32 Supplemental Reserve Service: Defined in WAPA Rate Schedule L-AS6.
- 3.33 Transmission Operator: Defined in the NERC Glossary.
- 3.34 Transmission Owner: Defined in the NERC Glossary.

- 3.35 Transmission Provider (TP): an entity that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce and provides transmission service in the WACM BAA.
- 3.36 Transmission Service Provider (TSP): an entity that administers a transmission tariff and provides Transmission Service to Transmission Customers under applicable Transmission Service agreements.
- 3.37 TSP BA Customer: A TSP or TP who offers transmission service in the WACM BAA, including but not limited to a TSP or TP who offers transmission service under that TSP's Open Access Transmission Tariff (OATT).
- 3.38 Uncontrollable Force: Shall mean 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 non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence of 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 Agreement 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.

3.39 WACM: The Western Area Colorado Missouri BA, which is the BA operated by WAPA's RMR. WACM includes portions of Arizona, Colorado, Montana, Nebraska, New Mexico, South Dakota, Utah, and Wyoming. References in this Agreement to "WACM" should be interpreted as "WAPA performing its functions in the capacity of the operator of WACM." Where the Agreement references "WAPA," it is to WAPA and is not limited to WAPA in the capacity as WACM.

3.40 WECC: The Western Electricity Coordinating Council or successor organization(s).

3.41 Western Energy Imbalance Service (WEIS): The Western Energy Imbalance Service Market which is administered by the Southwest Power Pool and which WACM will utilize to provide Energy Imbalance and

Generator Imbalance Services upon the commencement of the WEIS Market, which is anticipated to be February 1, 2021.

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

5. OTHER AGREEMENTS:

5.1 The purpose of this Agreement is to set forth the terms and conditions of BA Services and the Parties' obligations related to BA Services. As of the Effective Date of this Agreement, however, Customer, has the following contracts/agreements with WAPA, along with associated exhibits, as supplemented or amended, that contain terms that address the subject matter of this Agreement:

17-RMR-2821      Generator Imbalance and Transmission Losses

Terms of the above-identified existing agreements/contracts take priority, and are controlling, over this Agreement. This Agreement does not supersede or amend the terms of any existing contracts/agreements between the Parties.

5.2 When a contract/agreement, identified in Section 5.1 above, terminates or is amended, either by its own terms or by mutual agreement of the Parties, the Parties will review Exhibit A to determine if it needs to be amended or

revised to address that termination or amendment, but in any event, the Customer must continue to procure applicable BA Services identified in Section 8.1 of this Agreement through a contract with WAPA, or WACM; acquiring services from its TSP or TP, including LAPT or CRCM; self-providing the services; acquiring the services from a third party; or a combination of the foregoing; thus satisfying Section 8.3.

5.3 The WACM Sub-Entity Reserve Sharing Agreement between the Parties is not superseded or replaced by this Agreement.

6. ENTIRE AGREEMENT: Subject to the limitations set forth in Section 5 above, this Agreement and the Exhibits hereto, constitute the entire and integrated agreement between the Parties relating to the rates, terms, and conditions set out in this Agreement and its Exhibits as of the Effective Date.

7. TERM AND TERMINATION: The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until August 1, 2030, unless terminated earlier as set forth below:

7.1 Termination by Agreement: This Agreement may be terminated at any time by mutual written agreement of the Parties.

- 7.2 Termination Upon Notice: Except as provided in Section 7.5, WAPA may terminate this Agreement at any time by providing a Notice of Termination to the other Party at least six (6) months prior to the termination date; Provided, That the Parties may mutually extend the termination date if necessary for Customer to transition to a new Balancing Authority or make alternative arrangements; Further Provided, That the termination date shall be the last day of the month. Customer may terminate this Agreement at any time by providing a Notice of Termination to WAPA six (6) months prior to the termination date; Provided, That the termination date with respect to Customer shall extend through the last day of a month.
- 7.3 Early Termination for an Event of Default: If an Event of Default occurs, the Non-Defaulting Party may terminate this Agreement with respect to the Defaulting Party by providing a Notice of Termination at least thirty (30) calendar days prior to the termination date; Provided, That the termination date shall be the last day of a month.
- 7.4 Early Termination Due to Extended Uncontrollable Force: If, as a result of an Uncontrollable Force a Party is unable to meet an obligation hereunder for a period greater than ninety (90) calendar days, then the other Party shall have the right to terminate this Agreement by providing a Notice of

Termination within thirty (30) calendar days after the expiration of such ninety (90) calendar days period.

- 7.5 Early Termination Due To Balancing Authority Ceasing Operations As Balancing Authority, Including If The Balancing Authority Responsibilities Are Transferred To A Regional Transmission Organization: Either Party may terminate this Agreement, if any time after the Effective Date, an ISO, RTO, or other organization, agency or authority is approved by FERC to serve as the Balancing Authority for what is now the WACM BAA; Provided, That under this provision, either Party will notify the other Party no less than twelve (12) months prior to the effective date of termination of this Agreement, to the extent such notice is consistent with applicable FERC orders.
- 7.6 Notice of Termination: Notice of Termination of the Agreement shall be in writing and shall state: (a) the effective date of such termination, (b) the provision of this Agreement under which termination is being effectuated, and (c) the basis for the termination. Notice under this Section 7.6 shall be provided consistent with Exhibit H of this Agreement.
- 7.7 Effect of Termination: Upon the effective date of any termination of this Agreement, WAPA's responsibilities under this Agreement, including for



WACM's provision of BA Services to Customer, will cease in its entirety and Customer will be solely liable for alternative arrangements for the services under this Agreement, including arrangements for BA Services. The Parties will cooperate, consistent with Good Utility Practice, to facilitate the transfer of functions under this Agreement to another BA and effectuate the termination within the applicable notice period.

8. BA SERVICES:

- 8.1 The BA Services provided within the WACM BAA include, but are not limited to BA Real Power Losses Service and the following Ancillary Services: (i) Scheduling, System Control, and Dispatch Service; (ii) Reactive Supply and Voltage Control from Generation or Other Sources Service; (iii) Regulation and Frequency Response Service; (iv) Energy Imbalance and Generator Imbalance Services; and (v) Spinning and Supplemental Reserve Services.
- 8.2 BA Services provided by WACM, which are set forth in Exhibit A, shall be paid for in accordance with rates, charges, and conditions set forth in WACM's current rate schedules as posted on WAPA's RMR website and LAPT OASIS and as may be superseded from time to time.

- 8.3 Customer shall obtain BA Services, by: (i) purchasing from WACM; (ii) self-providing; (iii) acquiring from a third party as agreed upon by WACM; or (iv) a combination thereof, as applicable based on the service received. In Exhibit A, Customer and WACM indicate how Customer obtains each BA Service provided pursuant to this Agreement. For ease of reference, Exhibit A may also reflect each BA Service that Customer obtains under other contracts/agreements with WAPA, including those contracts identified in Section 5.1; however, in such case, Exhibit A will include a clear indication of those BA Services provided pursuant to this Agreement.
- 8.4 BA Services other than Energy Imbalance Service and Generator Imbalance Service under WEIS: Within the WACM BAA, WACM will utilize the TSP BA Customer's transmission system, without a WACM transmission reservation, to provide BA Services, other than Energy Imbalance Service and Generator Imbalance Service under WEIS. Energy Imbalance Service and Generator Imbalance Service under WEIS are covered below.
- 8.5 Energy Imbalance Service and Generator Imbalance Service under WEIS: WACM intends to participate in the WEIS, once it is operational, and will use the WEIS to provide Energy Imbalance Service and Generator

Imbalance Service. Sections 8.5.1 and 8.5.2 below address transmission use in relation to the WEIS.

8.5.1 Customer, who is a WEIS market participant (BA MP), agrees to provide WACM, who will pass the information on to WEIS, accurate information about BA MP's transmission capacity and/or transmission rights that are available for use by WACM and the WEIS, which will be used as part of the WEIS and also for the provision of Energy Imbalance Service and Generator Imbalance Service upon commencement of WEIS.

8.5.2 A TSP BA Customer who is not a WEIS market participant (TSP NMP) agrees to identify, on a yearly basis and update as deemed needed or appropriate by the TSP NMP, transmission capacity on its transmission system that the TSP NMP agrees to make available to WACM and WEIS, without a WACM transmission reservation, for the sole purpose of providing TSP NMP (and its transmission service customers, as applicable) Energy Imbalance Service and Generation Imbalance Service. The identified transmission capacity will not be used for any broader WEIS market purpose unless agreed to by the TSP NMP Customer. WACM agrees to communicate the transmission capacity limit supplied by the TSP NMP to the WEIS for

inclusion in the WEIS Security Constrained Economic Dispatch. Any transmission rights identified under this Section 8.5.2 will be intra-hour, as available, and at the lowest transmission priority recognized by FERC.

- 8.6 Notwithstanding any other provision of this Agreement, Customer agrees WACM is under no obligation to provide a BA Service set forth in Exhibit A if Customer's transmission rights are inadequate for WACM to provide that BA Service to Customer. If WACM determines Customer's transmission rights are inadequate for WACM to provide a BA Service set forth in Exhibit A to Customer, WACM will notify Customer. Customer will have the opportunity to cure such inadequacy within thirty (30) calendar days of such notice. If Customer fails to cure the inadequacy, WACM may cease providing that BA Service on the sixtieth (60th) calendar day following Customer's receipt of notice. WACM will cease invoicing Customer for such BA Service and the Parties will take steps to update Exhibit A to reflect this change of service. If Customer disagrees with WACM's determination that Customer's transmission rights are inadequate, Customer can dispute WACM's determination through the Dispute Resolution Procedures in Exhibit H, however, WACM will not be required to provide that BA Service during the pendency of the Dispute Resolution Procedures.

9. TRANSMISSION SERVICE PROVIDERS WITHIN THE BA:

9.1 Nothing in this Agreement relieves any TSP BA Customer from its responsibility for ensuring that each transmission customer and generator interconnecting to its transmission system has arrangements for all applicable BA Services consistent with the terms of the TSP BA Customer's OATT and any other applicable agreements.

9.2 WACM will only authorize the operation and energization of new resources and/or load within the WACM BAA if the entity operationally responsible for such resources and/or load has incorporated such resources and/or load into an existing BA Services Agreement, a new BA Services Agreement has been executed with WAPA that includes such new resources and/or load, or the new resource and/or load has been incorporated into alternative contractual arrangements acceptable to both WACM and the responsible entity. WACM shall work with the responsible entity to ensure compliance with this requirement as expeditiously as possible.

10. RELIABILITY COORDINATOR: The Parties obligations regarding Reliability Coordinator Services, if any, are set forth in in Exhibit C.

11. WECC/NERC DUES: Customer will be responsible for its pro rata share of WECC/NERC dues based on the ratio of Customer's annual NEL within the WACM BAA to the total annual NEL within the WACM BAA. If WECC and/or NERC bills Customer directly, then Customer will pay such dues directly to WECC and/or NERC. Considering this provision, any charge for WECC/NERC dues will be separately listed on an invoice and not subject to netting provisions provided otherwise in this Agreement.
12. SETTLEMENTS AND BILLING: The Settlement and Billing procedures are set forth in Exhibit D.
13. DATA REQUIREMENTS: The data requirements are set forth in Exhibit F.
14. BUSINESS PRACTICES: When finalized, WACM will post on OASIS an electronic link to the NAESB website where any rules, standards and practices that are protected by copyright may be obtained. WACM will also post on OASIS an electronic link to a statement of the process by which WACM will add, delete, or otherwise modify WACM's Business Practices. Such process shall set forth the means by which WACM shall provide reasonable advance notice to Customer of any such additions, deletions or modifications, the associated effective date, and any additional implementation procedures.

15. SPECIFIC REQUIREMENTS: Any specific requirements of Customer, such as needing regulatory approval, will be as set forth in Exhibit E.
16. POINT(S) OF INTERCONNECTION METERING, COMMUNICATIONS, SCHEDULING, AND OPERATIONS REQUIREMENTS: The Parties' Point(s) of Interconnection, Metering, Communications, Scheduling and Operations requirements are set forth in Exhibit F.
17. SENSITIVE INFORMATION AND INFORMATION SECURITY: The Parties' obligations regarding information security and confidentiality are set forth in Exhibit G.
18. GENERAL CONTRACT PROVISIONS: General contract provisions applicable to this Agreement are set forth in Exhibit H.
19. CREDITWORTHINESS PROCEDURES: The Parties agree to comply with WAPA's Creditworthiness Procedures, which are attached hereto as Exhibit I.
20. AMENDMENTS: This Agreement may be revised from time to time by a written instrument signed by both Parties.

21. EXHIBITS: The initial exhibits to this Agreement, as they may be amended or revised from time to time by a written instrument signed by both Parties, are attached to this Agreement and are incorporated by reference as if stated fully herein. New exhibits may be added in the future as required and shall be amended and made part of this Agreement by mutual written agreement of the Parties.
  
22. AUTHORITY TO EXECUTE: Each individual signing this Agreement certifies that the Party on whose behalf he or she has signed has duly authorized such individual to execute this Agreement that binds and obligates the Party.



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed the  
date first written above.

WESTERN AREA POWER ADMINISTRATION

By: \_\_\_\_\_  
Jonathan A. Aust

Title: Vice President of Operations  
for CRSP, DSW and RMR

Address: 5555 East Crossroads Boulevard  
Loveland, CO 80538-8986

Date: \_\_\_\_\_

INCORPORATED COUNTY OF LOS  
ALAMOS-DEPARTMENT OF PUBLIC  
UTILITIES

By: \_\_\_\_\_  
Philo Shelton

Title: Utilities Manager

Address: 10000 Central Avenue, Suite 130  
Los Alamos, NM 87544

Date \_\_\_\_\_

Witness:

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

Title: \_\_\_\_\_

BALANCING AUTHORITY SERVICES

1. This Exhibit B, made this \_\_\_\_ day of \_\_\_\_\_, 2020, to be effective under and as a part of Agreement No. 20-RMR-3182, hereinafter called Agreement, shall become effective concurrent with the Agreement, and shall remain in effect until superseded by another Exhibit B; Provided, This Exhibit B or any superseding Exhibit B shall terminate by the expiration or termination of the Agreement.
2. Definitions of the BA Services provided by WACM are defined in the applicable rate schedules:
  - 2.1 Scheduling, System Control, and Dispatch Service (Scheduling Service):  
As defined in Rate Schedule L-AS1.
  - 2.2 Reactive Supply and Voltage Control from Generation or Other Sources Service (VAR Support Service): As defined in Rate Schedule L-AS2.
  - 2.3 Regulation and Frequency Response Service (Regulation Service): As defined in Rate Schedule L-AS3.
  - 2.4 Energy Imbalance Service: As defined in Rate Schedule L-AS4.

- 2.5 Spinning Reserve Service: As defined in Rate Schedule L-AS5.
- 2.6 Supplemental Reserve Service: As defined in Rate Schedule L-AS6.
- 2.7 BA Real Power Losses Service: As defined in Rate Schedule L-AS7.
- 2.8 Generator Imbalance Service: As defined in Rate Schedule L-AS9.
- 3. CUSTOMER'S BALANCING AUTHORITY SERVICES:
  - 3.1 If Customer is TSP BA Customer, WACM will provide, and Customer is required to purchase Scheduling Service as provided in Rate Schedule L-AS1.
  - 3.2 BA Real Power Losses:
    - 3.2.1 For transactions associated with load in the BAA, Customer is required to submit to WACM balanced load forecasts and actual meter data with losses included, as indicated under Rate Schedule L-AS7.

- 3.2.2 For scheduled transactions that utilize transmission systems within the BAA but are not associated with load in the BAA, WACM will charge TSP BA Customer under Rate Schedule L-AS7.
- 3.3 Customer shall obtain all other BA Services by: (i) purchasing from WACM; (ii) self-providing; (iii) acquiring from a third party as agreed upon by WACM; or (iv) a combination thereof, as applicable based on the service received. In Exhibit A, Customer and WACM indicate how Customer obtains each BA Service.
- 3.4 If WACM determines Customer is not adequately providing for any of the necessary BA Services, it will provide or acquire the necessary BA Services on behalf of Customer in accordance with the applicable rate schedules and pass through the cost incurred for those services to Customer. If Customer disagrees with WACM's determination that Customer is not adequately providing the necessary BA Services, it can dispute WACM's determination through the Dispute Resolution Procedures in Exhibit H.
- 3.5 The BA Services provided to Customer under this Agreement will be indicated for each meter in Exhibit A of this Agreement.

Exhibit B  
Agreement No. 20-RMR-3182  
INCORPORATED COUNTY OF LOS ALAMOS-  
DEPARTMENT OF PUBLIC UTILITIES  
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4. WACM may modify the charges for BA Services upon written notice to the Customer; provided that any change to the charges to the Customer shall be as set forth in subsequent rate schedules promulgated pursuant to applicable Federal laws, regulations and policies and distributed to the Customer to become attached and made part of the applicable Service Agreement. WACM shall charge the Customer in accordance with the rate then in effect.
  
5. EXHIBIT REVISIONS: This Exhibit B may be modified, by written instrument signed by the Parties, in accordance with Section 21 of the Agreement.

RELIABILITY COORDINATOR

1. This Exhibit C, made this \_\_\_\_ day of \_\_\_\_\_, 2020, to be effective under and as a part of Agreement No. 20-RMR-3182, hereunder called Agreement, shall become effective concurrent with this Agreement and shall remain in effect until superseded by another Exhibit C; Provided, This Exhibit C or any superseding Exhibit C shall terminate upon expiration or the termination of the Agreement.

2. EXPLANATORY RECITALS:

- 2.1 Southwest Power Pool (SPP) Reliability Coordinator (RC) performs reliability coordinator functions for the SPP RC service area in accordance with North American Electric Reliability Corporation (NERC) Reliability Standards and Western Electric Coordinating Council (WECC) Regional Reliability Standards, as may be amended from time to time, for the Bulk Electric System (BES) facilities as well as the transmission facilities which are lower than 100-kV that can impact the reliability of the BES.
- 2.2 WAPA RMR, in its capacity as the WACM BA and a Transmission Operator within the WACM BAA within the SPP RC service area, entered into a Reliability Coordinator Services Agreement with SPP (Contract No. 18-RMR-2969).

- 2.3 Customer either (a) receives RC Services from SPP directly through an effective RC service contract with SPP (SPP RC Customers) or (b) receives RC Services through WAPA's contract with SPP for RC Services, Contract No. 18-RMR-2969, (RC Passthrough Customers) on behalf of those entities that did not sign a separate agreement with SPP RC.
- 2.4 For any Customer who is a SPP RC Customer (meaning any Customer that has an effective RC Service contract with SPP directly), only Sections 1, 2.4, 5, and 6 of this Exhibit C are applicable and all other sections will be deemed inapplicable and will not be considered a part of this Agreement. If the Customer's separate contract with SPP for RC Service terminates, the Parties will need to revise this Agreement to the extent necessary or applicable.
- 2.5 Under WAPA's contract with SPP (Contract No. 18-RMR-2969), SPP assesses various charges to WAPA for RC Services, including an annual payment allocated on the total NEL within the WACM BAA.
- 2.6 For RC Passthrough Customers, this Exhibit provides the terms for payment of the RC Passthrough Customers' share of costs for the

provision of RC Services under WAPA's SPP RC Contract (Contract No. 18-RMR-2969).

3. RC PASSTHROUGH CUSTOMER'S ANNUAL SHARE OF SPP RC CHARGES:

3.1 Annually/or as required, WAPA will calculate the costs it incurred from SPP to provide RC Services for the WACM BAA, inclusive of any other associated costs.

3.2 The costs that WAPA incurred over the course of the year will then be assigned to each RC Passthrough Customer based on its pro-rata share. The RC Passthrough Customer's pro rata share is calculated by finding the quotient of its NEL divided by the WACM adjusted NEL. WACM adjusted NEL is the total WACM NEL minus the NEL within the WACM BAA for entities that have contracted directly with SPP for RC Services.

3.3 WAPA shall invoice each RC Passthrough Customer by taking the RC Passthrough Customer's pro rata share and multiplying it by WACM's cost to provide RC Services.

4. PAYMENT: Annually WAPA will invoice RC Passthrough Customers and the RC Passthrough Customers will pay for their share of SPP RC assessments



for dues, costs, or charges based on each RC Passthrough Customer's proportional share of Load within the WACM BAA.

- 4.1 WAPA shall invoice RC Passthrough Customers annually for the RC Passthrough Customers' share of SPP's dues, costs, or charges, for providing RC Services. These charges will be based upon the invoices WAPA receives from SPP and where not directly attributable to the RC Passthrough Customer will be passed through based on the Customer's NEL within the WACM BAA.
- 4.2 RC Passthrough Customer shall follow the instructions on the invoice and pay the full amount by the due date.
5. NOTICES: Notices will be provided consistent with the Notice provisions in Exhibit H.
6. EXHIBIT REVISIONS: This Exhibit C may be modified, by written instrument signed by the Parties, in accordance with Section 21 of the Agreement.

SETTLEMENTS/BILLING

1. This Exhibit D, made this \_\_\_\_ day of \_\_\_\_\_, 2020, to be effective under and as a part of Agreement No. 20-RMR-3182, hereinafter called the Agreement, shall become effective on the date first written above and shall remain in effect until superseded by another Exhibit D; Provided, This Exhibit D or any superseding Exhibit D shall terminate upon expiration or termination of the Agreement.
2. WAPA will provide centralized billing and payment services under this Agreement for all credits or charges related to applicable BA Services.
3. MONTHLY, WAPA WILL:
  - 3.1 Invoice Customer for the applicable BA Services provided by WACM, pursuant to this Agreement, as specified in Exhibit A and in accordance with the then applicable rate schedules.<sup>1</sup>
  - 3.2 For RC Passthrough Customers, WAPA will invoice Customer for its pro rata cost share of the RC Services as described in Exhibit C.

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<sup>1</sup> Exhibit A identifies the meters for BA Services provided under this Agreement, and that WAPA will bill under this Agreement. Exhibit A, also, for reference, identifies the meters that receive BA Services through other agreements (for example, LAPT and CRCM NITS agreements) that WAPA does not bill under this Agreement.

- 3.3 Provide preliminary data for review and confirmation of settlements calculations and charges on Customer's monthly power invoice.
- 3.4 Perform checkouts on meter data for interties, generation, and Load.
- 3.5 Perform checkouts on net schedule data and shares of jointly owned generation.

4. BILLING AND PAYMENT:

- 4.1 For BA Services furnished pursuant to this Agreement during the preceding month WAPA will issue invoices to Customer on or about ten (10) business days after the end of the monthly billing period.
- 4.2 If WAPA is unable to issue timely monthly invoice(s), WAPA may elect to render estimated invoice(s). Such estimated invoice(s) shall be subject to the same payment provisions as final invoice(s), and any applicable adjustments will be shown on a subsequent monthly invoice.
- 4.3 Payment of invoices issued by WAPA are due and payable by the owing Party before the close of business on the twentieth (20th) calendar day after the date of issuance of each invoice or the next business day thereafter if

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said day is a Saturday, Sunday, or Federal holiday. Invoices shall be considered paid when payment is received by WAPA or by the Customer. Invoices 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 one Party to the other Party. Should either Party agree to accept payments by mail, these payments will be accepted as timely and without assessment of the charge provided for in Section 5 of this Exhibit D, 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.

4.4 The Parties agree that net billing procedures may be used, at WAPA's discretion, for payments due WAPA by Customer and for payments due Customer by WAPA for BA 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 reasonably requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

4.5 To the extent consistent with the provisions of the Prompt Payment Act and Contract Disputes Act, Customer may, in good faith, dispute the correctness

of any statement or any adjustment to a statement, rendered under this Agreement or adjust any statement for any arithmetic or computational error within twenty-four (24) months of the date the statement, or adjustment to a statement, was rendered. If a statement or portion thereof, or any other claim or adjustment arising under this Agreement is disputed, Customer shall provide written notice to WAPA (the "Billing Dispute Notice") which: (a) states the good faith basis for the dispute; (b) specifies the amount in dispute; and (c) provides documentation reasonably supporting the determination of the disputed amount. Thereafter, the Parties will follow the Dispute Resolution procedures set forth in Exhibit H, Section 7. Customer shall make payment of the disputed amount under protest and thereafter shall be repaid, credited or reimbursed by WAPA for any amount determined to be refundable, with interest allowable under applicable law, after the resolution of such dispute.

5. NONPAYMENT OF BILLS IN FULL WHEN DUE:

- 5.1 Invoices not paid in full by Customer by the due date specified on the invoice 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. WAPA 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.

5.2 If a Customer payment is not received by WAPA on or before the due date indicated on the invoice, Customer shall be subject to interest payments and penalties as prescribed under 5 C.F.R. 1315.10 and the Prompt Payment Act, 31 U.S.C. 3900, as applicable.

6. EXHIBIT REVISIONS: This Exhibit D may be modified, by written instrument signed by the Parties, as provided for in Section 21 of the Agreement.

SPECIFIC REQUIREMENTS

1. This Exhibit E, effective under and as a part of Agreement No. 20-RMR-3182, hereinafter called Agreement, shall become effective concurrent with the Agreement, and shall remain in effect until superseded by another Exhibit E; Provided, This Exhibit E or any superseding Exhibit E shall terminate upon the expiration or termination of the Agreement.

2. SPECIFIC REQUIREMENTS:

- 2.1 CHOICE OF LAW AND JURISDICTION FOR COURT ACTION: Section 14 of Exhibit H of this Agreement is deleted and replaced with the following: Customer is a political subdivision of the State of New Mexico (State) and is organized and created under and by virtue of the laws of the State. Customer's authority under this Agreement is governed by the laws of the State, which impose certain limitations on the obligations of the Customer under this Agreement. The Parties agree that this Agreement will be governed by Federal law to the extent it is applicable; otherwise the laws of the State govern, without giving effect to any conflict of laws rules. For the avoidance of doubt and by way of illustration and not limitation, New Mexico laws govern Customer's obligations under this Agreement applicable to public records, liability, indemnification and its payment obligations and that

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any provisions of this Agreement, including Exhibits, inconsistent with this Exhibit E shall be construed to conform to this Exhibit E.

3. EXHIBIT REVISIONS: This Exhibit E may be modified, by written instrument signed by the Parties, in accordance with Section 21 of the Agreement.



POINT(S) OF INTERCONNECTION, METERING, COMMUNICATIONS,  
SCHEDULING AND OPERATIONS

1. This Exhibit F, made this \_\_\_\_ day of \_\_\_\_\_, 2020, to be effective under and as a part of Agreement No. 20-RMR-3182, hereinafter called Agreement, shall become effective concurrent with the Agreement, and shall remain in effect until superseded by another Exhibit F; Provided, This Exhibit F or any superseding Exhibit F shall terminate by the expiration or termination of the Agreement.
  
2. POINT(s) OF INTERCONNECTION: The Point(s) of Interconnection, between Customer and WACM (including behind the meter generation that is Customer's responsibility), are listed in Exhibit A hereto. The Parties shall agree to Customer's Point(s) of Interconnection or Metered Subsystem boundaries (if applicable) as set forth in Exhibit A and required by this subsection.
  - 2.1 Metering: The meters, metering system equipment, and data shall be in compliance with WAPA's Meter Policy dated 07/20/2018 or as superseded (Meter Policy).
    - 2.1.1 For any meters and metering system equipment that is not currently in compliance with WAPA's Meter Policy, the Parties will agree to a plan to bring the meters and any necessary metering system

equipment into compliance or to contractually determine another arrangement agreeable with the Parties.

2.1.2 The Exhibit A may require changes from time to time. When changes are required, either Customer or WACM will notify the other Party of the required changes to the Exhibit A. The Parties shall discuss and mutually agree to any additional metering required in accordance with the Agreement, this Exhibit F, and WAPA's current Meter Policy.

2.1.3 Exhibit A shall be revised to reflect any necessary changes to the Point(s) of Interconnection or Metered Subsystem (if applicable), as mutually agreed to by the Parties.

2.2 The purpose of maintaining Customer's Point(s) of Interconnection or Metered Subsystem (if applicable) in Exhibit A is to maintain an accurate account of Customer's resources and load which it has operational responsibility within the WACM BA. Additionally, Exhibit A identifies Customer's applicable arrangements for BA Services as well as identifying the BA Services the WACM BA provides to Customer.

2.3 The net scheduled interchange between WACM and Customer shall be compared hourly, or as modified and agreed upon between the Parties,

based upon current WACM Business Practices, with the net actual integrated interchanges as determined by the telemetering of Customer's Point(s) of Interconnection or Metered Subsystem (if applicable) to determine the deviation from schedule, or energy/generator imbalance. It is the intent of the Parties that net energy/generator imbalance calculated on an hourly basis (using accumulated five (5) minute intervals) will be maintained as near to zero (0) as possible through the employment of standard utility operating practices except as otherwise agreed to by WACM for reliability requirements.

3. COMMUNICATION AND DATA REQUIREMENTS:

3.1 Customer agrees to supply WACM any information reasonably necessary to provide the BA Services outlined in this Agreement, including such information required in accordance with Good Utility Practice, applicable NERC or WECC reliability standards, NWPP Reserve Sharing requirements and WEIS requirements or those of any successor organizations. WACM will include its data requirements in WACM's Business Practice and update as appropriate consistent with the process described in the WACM Business Practices. In the event Customer believes certain data requirements are inapplicable to it, Customer may request a waiver from WACM.

3.2 Customer shall provide dedicated communication links or other communication facilities to the Point(s) of Interconnection or Customer's Metered Subsystem (if applicable), which are reasonably requested by WACM, to facilitate automatic data transfers and allow WAPA to operate WACM in accordance with NERC and WECC standards.

3.2.1 For any dedicated communication links, other communication facilities, and telemetered data that are not currently in compliance with WAPA's Meter Policy, the Parties agree to bring the dedicated communication links, other communication facilities, and telemetered data into compliance or to document the alternative arrangements agreeable with the Parties.

3.3 Telemetered data from the Point(s) of Interconnection or Metered Subsystem (if applicable) shall be made available to WACM in accordance with WAPA's Meter Policy, effective 07/20/2018, or as superseded. WACM in coordination with Customer will determine what telemetered data is required to meet the operational requirements for WACM.

3.4 If Customer does not provide the required metering data and communication links, WACM will estimate the meter data for Customer and

any costs or payments associated with that data will be made based upon WACM's estimate until Customer provides the required meter data and communication links.

- 3.5 WACM will use the meter data/processes it currently has available to calculate any charges or payments associated with BA Services. In the event Customer would like to make changes to the meter data used by WACM, Customer will be responsible for all costs associated with purchasing and installing any new metering equipment or system changes.
4. SCHEDULING: Customer shall submit, or make arrangements to submit, schedules based upon WACM Business Practices. Customer will have the opportunity to review and comment on proposed changes to the WACM Business Practices.
5. OPERATIONS: To reliably operate the WACM BAA, WACM needs to comply with various requirements including, but not limited to compliance with applicable FERC, NERC, and WECC reliability standards; Reliability Coordinator requirements; Reserve Sharing Group requirements; and Energy Imbalance Market requirements, such as WEIS (or any successor organization of the above), and the WACM Business Practices, as each of these requirements may be

updated from time to time. WACM has included provisions in this Agreement necessary for WACM to comply with these requirements.

- 5.1 Customer shall pay for modification to the control and/or accounting equipment of WAPA required as a result of providing a BA Service specifically to Customer under this Agreement upon WAPA's presentation of invoice and documentation of such modifications. Such costs shall be defined and agreed upon between WAPA and Customer prior to such modifications being made.
- 5.2 Each Party shall be responsible for providing, maintaining, and monitoring its operating reserve capacity in accordance with applicable NERC, WECC, and appropriate RSG or successor organizations' requirements.
- 5.3 Each Party shall be responsible for providing its appropriate share of capacity and energy losses within its portion of WACM, incurred either in supplying energy to its own Loads or scheduled transactions not for load.
- 5.4 Customer's revenue metering at the Point(s) of Interconnection or Customer's Metered Subsystem (if applicable), provided in accordance with WAPA's Meter Policy, and identified in Exhibit A, shall be used to determine the Customer's Load responsibility, including losses.

6. Technical Committee: WACM shall establish a BAA Technical Committee. The Technical Committee shall include at least one (1) representative from WAPA and one (1) representative from each party who executes a BA Services Agreement. As such, Customer will have one (1) representative. The Technical Committee shall provide guidance to and shall facilitate the coordination and interaction between the WACM BA customers and WAPA.
  
7. EXHIBIT REVISIONS: This Exhibit F may be modified, by written instrument signed by the Parties, as provided for in Section 21 of the Agreement.

SENSITIVE INFORMATION  
AND INFORMATION SECURITY

1. This Exhibit G, effective under and as a part of Agreement No. 20-RMR-3182, hereinafter called Agreement, shall become effective concurrent with the Agreement, and shall remain in effect until superseded by another Exhibit G; Provided, This Exhibit G or any superseding Exhibit G shall terminate upon expiration or termination of the Agreement.
2. SENSITIVE INFORMATION:
  - 2.1 Parties may possess certain non-public, sensitive (but unclassified) information or Critical Energy Infrastructure Information (CEII) (collectively, Sensitive Information) which they wish to protect against disclosure.
  - 2.2 The term "Sensitive Information," as used in this Exhibit G, means information of any kind, in whatever form, including without limitation, business data, specifications, drawings, sketches, models, samples, reports, plans, forecasts, current or historical data, computer programs or documentation, and all other technical and financial data, whether disseminated orally, in writing, electronically or otherwise.



To be "Sensitive Information," however, the Sensitive Information needs to be provided by a party in possession (disclosing Party) and received by another Party (receiving Party) and marked pursuant to Section 2.3 below.

2.3 All information from a disclosing Party that should be protected hereunder as Sensitive Information shall:

2.3.1 If in writing or other tangible form, be conspicuously labeled on every page as "Sensitive," "Confidential," or "CEII" with a similar legend at the time of delivery and if so labeled shall be considered "Sensitive Information."

2.3.2 If oral Information is identified as Sensitive Information and, if subsequently it is reduced to writing by affected Party(ies), whether electronically or otherwise, it shall be treated as Sensitive Information and shall be labeled in accordance with this Section 2.3.

2.4 Treatment of Sensitive Information: Each Party agrees to preserve, to the maximum extent permitted by law, the confidentiality of Sensitive Information supplied to it by another Party either during the negotiations leading to this Agreement or during the course of implementing, performing or winding up this Agreement. Except as provided in Section 2.5, this

Sensitive Information may not be disclosed outside of the receiving Party without written approval of the disclosing Party.

- 2.5 Authorized Disclosures: For reliability purposes, a Party may provide Sensitive Information of another Party to the FERC, NERC, WECC, RC, or RSG, subject to any applicable Non-Disclosure Agreement (NDA), including but not limited to, the Western Interconnected Data Sharing Agreement (WIDSA) and Operating Reliability Data (ORD) Agreement and, provided however, the Party disclosing Sensitive Information provides advance notice to the Party whose Sensitive Information will be disclosed in advance of that disclosure. A Party may also disclose Sensitive Information received from another Party to the receiving Party's affiliates, auditors, attorneys, consultants, agents, advisors, persons providing financing to the receiving Party, and to other third parties, including other WACM customers, only as may be necessary for the receiving Party to perform its obligations under this Agreement; Provided, That any such persons agree to be bound by the confidentiality provisions of this Agreement. Notwithstanding anything contained in this Section 2.5, Sensitive Information may be disclosed, to the extent required by applicable law, (a) to any governmental authority, including WECC or NERC according to the Compliance Monitoring and Enforcement Programs, requiring such Sensitive Information be disclosed and (b) pursuant to the Freedom of Information Act (FOIA) or other

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disclosure laws; Provided further, That: (a) such Sensitive Information is submitted under applicable provisions, if any, for confidential treatment by such governmental authority or under the FOIA or other disclosure law; (b) prior to such disclosure, the Party who supplied the information is given notice of the disclosure requirement (if time permits and the receiving Party's counsel determines that such notice is permitted by law) so that it may take at its own risk and expense whatever action it deems appropriate, including intervention in any proceeding and the seeking of an injunction to prohibit such disclosure; and (c), if disclosure to a governmental authority or required by FOIA or other disclosure law, the Party subject to the governmental authority or disclosure requirement endeavors to protect the confidentiality of any Sensitive Information to the extent reasonable under the circumstances and to use its good faith efforts to prevent the further disclosure of any Sensitive Information.

- 2.6 Any disclosing Party shall have the right at any time to correct, by written notification to the receiving Party, any failure to designate information as Sensitive Information. Immediately upon receiving said notification, receiving Party shall treat such information as Sensitive Information, and shall protect the information in accordance with this Exhibit G.

3. SURVIVAL OF CONFIDENTIALITY OBLIGATIONS: Sensitive Information received from another Party shall be kept confidential in accordance with the terms of this Agreement for at least five (5) years after the expiration of this Agreement, or such longer period as may be prescribed by governmental authority or applicable law.
4. RIGHT TO REMEDIES: In the event of an unauthorized disclosure to a third party, the Parties agree that there is no adequate remedy at law and accordingly, in addition to any other available legal or equitable remedies, a Party will be entitled to an injunction against such breach without any requirement to post a bond as a condition of such relief.
5. EXHIBIT REVISIONS: This Exhibit G may be modified by written instrument signed by the Parties, in accordance with Section 21 of the Agreement.

GENERAL CONTRACT PROVISIONS

1. This Exhibit H, effective under and as a part of Agreement No. 20-RMR-3182, hereinafter called Agreement, shall become effective concurrent with the Agreement, and shall remain in effect until superseded by another Exhibit H; Provided, This Exhibit H or any superseding Exhibit H shall terminate upon the expiration or termination of the Agreement.
2. NOTICES AND AUTHORIZED REPRESENTATIVES:
  - 2.1 Any notice, demand, or request specifically required by the Agreement 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 means, 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.

- 2.2 The Parties may agree on alternative methods of giving operational and scheduling notices.
- 2.3 Each Party to the Agreement, by written notice to the other, shall designate the representative(s) who is (are) authorized to act on its behalf with respect to those matters contained in the Agreement. Each Party may change the designation of its authorized representative(s) upon oral notice given to the other, confirmed promptly by written notice.
- 2.4 Despite the requirements of this Section 2, where any provision of this Agreement requires a Party to furnish any particular data, information, or notice in a specified manner or within a specified time period, such provision shall control.
3. EFFECT OF SECTION HEADINGS: Section headings or Provision titles appearing in the Agreement or Exhibits are inserted for convenience only and shall not be construed as interpretations of text.
4. SEVERABILITY: Wherever possible, each provision of this Agreement (including any Exhibits hereto) shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision contained herein shall be found or ruled to be invalid, illegal, or unenforceable in any respect and for any reason, such

provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality, or unenforceability without invalidating the remainder of the provision or any other provision of this Agreement, and in such event, the Parties shall attempt to negotiate amendments to this Agreement that would permit each Party to realize the equivalent value of the economic bargain contemplated by this Agreement absent such finding or ruling.

5. UNCONTROLLABLE FORCE: Neither Party to the Agreement shall be considered to be in default in performance of any of its obligations under the Agreement, except to make payment as specified herein, when a failure of performance shall be due to an Uncontrollable Force.
6. EVENTS OF DEFAULT: The following events are defaults (each a “default” before the passing of applicable notice and cure periods, and an “Event of Default” thereafter):
  - 6.1 The failure to make, when due, any payment, credit, or reimbursement required by this Agreement, if such failure is not remedied within sixty (60) calendar days after receipt of written notice of such failure is given to the Defaulting Party by the Non-Defaulting Party, an Event of Default will have occurred.

6.2 Any representation or warranty made by a Party herein that is false or misleading in any material respect when made or when deemed made or repeated, then an Event of Default will have occurred.

6.3 The failure to perform any material covenant or material obligation set forth in this Agreement, if the failure to perform the material covenant or material obligation is not remedied within sixty (60) calendar days after receipt of written notice thereof to the Defaulting Party, then an Event of Default will have occurred.

6.4 If Customer fails to provide collateral as set forth in the Creditworthiness Procedures, an Event of Default will have occurred, and WAPA may suspend service under this Agreement to Customer no sooner than fifteen (15) business days after WAPA notifies Customer of the suspension of service. The suspension of service shall continue until Customer provides collateral. Thereafter, WAPA may terminate service under Section 7.3 of the Agreement, Termination in the Event of Default.

7. DISPUTE RESOLUTION:

7.1 Negotiations: The Parties shall attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly by



negotiation. A Party may give the other Party written notice of any dispute not resolved in the normal course of business, setting forth in reasonable detail the particulars of the dispute (each such notice, including a Billing Dispute Notice, a "Dispute Notice"). Each Party shall designate a Representative who shall meet at a mutually acceptable time and place within ten (10) calendar days after delivery of such Dispute Notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and attempt to resolve the dispute. The Parties agree to provide and exchange supporting facts, records and information regarding the dispute (including calculation and bases) as part of the good faith negotiations. If the matter has not been resolved within thirty (30) calendar days after a Party's receipt of a Dispute Notice, either Party may pursue all remedies available, either by law or in equity.

7.2 Confidentiality: The existence, contents, or results of any negotiation under this Section 7 shall be deemed to be Sensitive Information.

8. NO EXPANSION OF JURISDICTION, WAIVER OF DEFENSES, LIABILITY FOR PENALTIES, OR INCONSISTENT OBLIGATIONS:

- 8.1 WAPA has not waived or conceded any defense, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction in any action against it by an Enforcement Authority.
- 8.2 WAPA has not accepted any liability, responsibility, or obligation to pay any civil monetary penalties or fines imposed by an Enforcement Authority to which it would not have been subject in the absence of this Agreement.
- 8.3 SPP WEIS WITHDRAWAL: Under the terms of this Agreement, WACM will not charge Customer withdrawal payments WAPA incurs under Section 12.6 of the Western Joint Dispatch Agreement.

9. PENALTIES:

- 9.1 **If, notwithstanding Sections 8.1 and 8.2 above of this Exhibit H,** WACM is assessed penalties by an Enforcement Authority, including monetary penalties and costs for required mitigation (collectively “penalty costs”), for confirmed violations of the NERC Reliability Standards and WECC Regional Reliability Standards applicable to Balancing Authorities, Customer may be either directly assigned such penalty costs or may be assigned a portion of such penalty costs, but only to the extent set forth in the remaining subsections of Section 9 of this Exhibit H. For the avoidance

of doubt, this Section 9, including all subsections, apply only to violations of Reliability Standards and penalty costs, related to WAPA's status as the WACM Balancing Authority.

9.2 Direct Assignment of Costs Where Violation Can be Directly Assigned: If an Enforcement Authority assesses penalty costs against WACM for any violation of one or more NERC Reliability Standards or Regional Reliability Standards applicable to Balancing Authorities, and the Customer's conduct or omission directly caused or directly contributed to the cause of the violation(s), Customer will be responsible for all or a proportion of the penalty cost; provided that WACM notified the Customer of the underlying enforcement proceeding and the enforcement proceeding results in a finding that the Customer's conduct or omission directly contributed to or directly caused the violation.

9.2.1 WACM will notify Customer whose conduct or omission is believed to have directly contributed to or directly caused the violation in advance of any enforcement proceeding. The notice will inform Customer that WACM intends to directly assign the penalty costs or a portion of the penalty cost to Customer under Section 9.3, including the basis for such direct assignment, and inform Customer that Customer may seek to participate in the enforcement proceeding. A

failure by Customer to participate in enforcement proceeding does not prevent WACM from the direct assignment of costs under this Section 9.2.1.

9.3 Spreading of Costs Where Violation Cannot Be Directly Assigned: If an Enforcement Authority assesses one or more penalty costs against WACM for any violation of one or more NERC Reliability Standards or Regional Reliability Standards applicable to Balancing Authorities and WACM is determined to be responsible for the violation or the entity responsible for the violation cannot otherwise be determined, WACM will notify the Customer as soon as possible after receiving notification by FERC, NERC, WECC and/or the applicable Regional Entity of an assessment of a penalty cost. In such a situation, Customer will be financially obligated to pay a portion of the penalty costs in proportion to the Customer's NEL share within the WACM BAA.

9.4 Payment: If WACM is assessed penalty costs, WACM will invoice Customer in accordance with Exhibit D (Settlement/Billing), and Customer will pay such invoice within sixty (60) calendar days of the date of the invoice; Provided however, in no circumstance will WACM invoice a Customer before the final conclusion of any enforcement proceeding or

conclusion of any Dispute Resolution undertaken pursuant to Section 7 of this Exhibit H.

- 9.5 The existence of an Uncontrollable Force does not excuse a Party's responsibility for penalty costs under this Section 9.
- 9.6 If Customer has executed a WACM Sub-Entity Reserve Sharing Agreement, any Customer obligations for penalties or sanctions arising under that agreement are set forth in that agreement and are governed by that agreement, consistent with Section 5.3 of the Agreement. Likewise, if Customer has executed a Reliability Coordinator Services Agreement directly with the Southwest Power Pool or a successor Reliability Coordinator, any Customer obligations for penalties or sanctions arising under that agreement are set forth in that agreement and are governed by that agreement.
- 9.7 Any allocation of a penalty cost or request for payment under this Section 9 will be subject to the dispute resolution procedures contained in Section 7 of this Exhibit H.
10. DUTY TO MITIGATE: Each Party agrees that it has a duty to mitigate damages, and each covenant that it will use reasonable efforts to minimize any damages it

may incur as a result of the other Party's performance or nonperformance of this Agreement.

11. 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 Agreement, 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, to the extent consistent with Good Utility Practice, with the other and render such assistance as the Party so requested may determine to be available and consistent with Good Utility Practice. 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 WAPA shall be in accordance with Exhibit D Sections 4 (Billing and Payment) and 5 (Nonpayment of Bills in Full When Due). WAPA shall pay bills issued by Customer for services provided as soon as the necessary vouchers can be prepared which shall normally be within thirty (30) days.

12. ASSIGNMENT: No voluntary transfer of the Agreement or of the rights of a Party under the Agreement shall be made without the prior written approval of the other Party. Any voluntary transfer of the Agreement or of the rights of a Party under the Agreement made without the prior written approval of the other Party may result in the termination of the Agreement; Provided, That the written approval shall not be unreasonably withheld; Provided further, That if Customer operates a project financed in whole or in part by the Rural Utilities Service, Customer may transfer or assign its interest in the Agreement 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 Customer, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of the Agreement to the same extent as though such successor or assignee were the original customer under the Agreement; 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 Section 12. No sale, assignment, transfer, or other disposition permitted by this Agreement shall affect, release, or discharge any Party from its rights or obligations under this Agreement, except as may be expressly provided by this Agreement or by written agreement of the Parties.

13. NO THIRD PARTY RIGHTS: Except as otherwise specifically provided in this Agreement, the Parties do not intend to create rights in or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein.
14. CHOICE OF LAW AND FORUM: Federal law shall control the obligations and procedures established by this Agreement and the performance and enforcement thereof. The forum for litigation arising from this Agreement shall exclusively be a federal court of the United States, unless the Parties agree to pursue alternative dispute resolution.
15. FURTHER ASSURANCES: If either Party determines in its reasonable discretion that any further instruments, assurances, or other things are necessary to carry out the terms of this Agreement, the other Party shall use a good faith effort to execute and deliver all such instruments or assurances, and do all things reasonably necessary to carry out the terms of this Agreement.
16. SURVIVAL OF OBLIGATIONS: Upon the expiration or termination of the Parties' obligations under this Agreement, any monies, penalties, credits, reimbursements or other charges due and owing under this Agreement shall be paid, credited, or reimbursed, any corrections or adjustments to payments previously made shall be determined, and any refunds, credits, or reimbursements due shall be made, as



soon as practicable but no later than sixty (60) calendar days after such termination except WAPA may be unable to invoice all charges within sixty (60) calendar days after such termination and, thus WAPA will invoice Customer as soon as practicable and such invoice will be paid within thirty (30) calendar days after receipt of such invoice. All penalty, indemnity, confidentiality obligations and audit rights shall survive the termination of this Agreement in accordance with their respective terms. Upon the effective date of any termination of this Agreement, each Party's obligations provided for in this Agreement will survive termination and remain in effect solely for the purpose of complying with the provisions of this Section 16.

17. WAIVERS: No waiver of all or any part of this Agreement shall be valid unless it:  
(a) is reduced to writing; (b) expressly states that the Parties agree to such waiver; and (c) is signed by the Parties. Except as specifically set forth herein, a Party's failure to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions as to any future violation thereof, nor prevent it from enforcing each and every provision of this Agreement at such time or at any time thereafter.
18. LIABILITY:

18.1 Indemnification: Except as otherwise provided in Section 9 of this Exhibit H, and to the extent allowed by law, Customer shall indemnify and hold harmless WAPA and, defend WAPA's officers, employees and agents and contractors, and at the request of WAPA, defend WAPA from and against all liabilities, actions, claims, losses, costs, damages, penalties and expenses (including without limitation reasonable legal fees) of any kind or nature whatsoever that may at any time be brought against or incurred or suffered by WAPA, including from a third party, relating to and/or arising from, or connected to Customer's representations, covenants or other obligations arising out of this Agreement. Nothing in this provision prevents Customer from disputing charges issued by WAPA.

18.2 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.

19. CONTINGENT UPON APPROPRIATIONS AND AUTHORIZATION:

19.1 Where activities provided for in the Agreement 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 Agreement. In case such appropriation is not made, Customer hereby releases the United States from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

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

20. COVENANT AGAINST CONTINGENT FEES: Customer warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement 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 Customer for the purpose of securing business. For breach or violation of this warranty, WAPA shall have the right to annul the Agreement without liability or in its discretion to deduct from the Agreement price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

21. CONTRACT WORK HOURS AND SAFETY STANDARDS: The Agreement, 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.
22. 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 Customer 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 Agreement, except that Indian Tribes and tribal organizations may apply Indian preference to the extent permitted by Federal law.
23. USE OF CONVICT LABOR: Customer agrees not to employ any person undergoing sentence of imprisonment in performing the Agreement 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.

24. AGREEMENT SUBJECT TO COLORADO RIVER COMPACT: Where the energy sold under the Agreement is generated from waters of the Colorado River system, the Agreement is made upon the express condition and with the express covenant that all rights under the Agreement 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 Agreement 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 WAPA under the Agreement, and in the storage, diversion, delivery, and use of water for the generation of electrical energy to be delivered by WAPA under the Agreement.
25. EXHIBIT REVISIONS: This Exhibit H may be modified by written instrument signed by the Parties, as provided for in Section 21 of the Agreement.

CREDITWORTHINESS PROCEDURES

1. This Exhibit I, made this \_\_\_\_ day of \_\_\_\_\_, 2020, to be effective under and as a part of Agreement No. 20-RMR-3182, hereinafter called the Agreement, shall become effective on the date first written above and shall remain in effect until superseded by another Exhibit I; Provided, That this Exhibit I or any superseding Exhibit I shall terminate upon expiration or termination of the Agreement.

2. APPLICABILITY:

2.1 These Creditworthiness Procedures apply to Customer for service provided under this Agreement.

2.2 The word "Customer" in these Creditworthiness Procedures refers to the Customer signing this Agreement.

3. EVALUATION OF INFORMATION:

3.1 WAPA's Chief Financial Officer (CFO) shall conduct creditworthiness evaluations in consultation and coordination with the appropriate Regional Manager or CRSP Management Center Manager.

3.2 Customers not in default of their financial commitments to WAPA under an existing contract within the last twelve (12) months of the date of these procedures shall be deemed creditworthy. Customers .I, determined to be creditworthy are not subject to an initial creditworthiness evaluation as set forth in Section 3.3 of this Exhibit I.

3.3 New Customers and existing Customers that have defaulted on their financial commitments to WAPA under an existing contract within the last twelve (12) months of the date of these procedures, shall be subject to a creditworthiness evaluation.

3.4 WAPA will evaluate the following criteria when conducting a creditworthiness evaluation:

3.4.1 Is the Customer on WAPA's subscribed rating service watch list, currently at or below "BB" on Standard & Poor's ratings (for example); or

3.4.2 Is the Customer currently in bankruptcy proceedings, or, based on objective and reliable financial reporting, expected to seek bankruptcy protection in the near future; or

3.4.3 Is the Customer experiencing significant financial hardship or distress that a reasonable examiner of creditworthiness, applying reasonable creditworthiness standards, would find material to decisions concerning credit?

3.5 If WAPA determines, based on any of the criteria above, that a Customer's ability to make payments under this Agreement is in substantial doubt, the Customer will be deemed non-creditworthy. Upon deeming a Customer non-creditworthy, WAPA will promptly provide written notice of such determination and the basis for its determination to the Customer. Customers may contest WAPA's creditworthiness determination as set forth in Section 4 of this Exhibit I.

4. CONTESTING CREDITWORTHINESS DETERMINATION:

4.1 Within five (5) business days of receiving written notice of a non-creditworthiness determination, the Customer may contest WAPA's creditworthiness determination by submitting a written notice to WAPA explaining its reasons for contesting the determination. The notice must include the name of a designated senior representative authorized to represent the Customer. The written notice contesting WAPA's creditworthiness determination shall be referred to WAPA's CFO who will



issue a written decision to the designated senior Representative of the Customer within three (3) business days of receiving the Customer's notice.

4.2 Should the Customer disagree with the CFO's decision, the Customer may appeal the decision by submitting a written notice to WAPA's Administrator within three (3) business days of receiving the CFO's decision. WAPA's Administrator will issue a written decision within three (3) business days of receiving the Customer's notice.

4.3 The requirement to provide collateral security shall be stayed during the process of contesting a creditworthiness determination. Any such stay of the requirement to provide collateral security shall expire upon Customer's receipt of the CFO's written decision or, as applicable, the Administrator's written decision upholding a non-creditworthiness determination.

5. ADVERSE MATERIAL ISSUE/CHANGE:

5.1 An adverse material issue or change is an occurrence or event that results in a Customer experiencing significant financial hardship or distress such that a reasonable examiner of creditworthiness, applying reasonable creditworthiness standards, would find material to decisions concerning credit. Examples of an adverse material issue/change that would be

reviewed by WAPA include, but are not limited to, a bankruptcy filing, being placed on a credit watch list, and a criminal indictment of a corporation or corporate officers.

5.2 WAPA's CFO will initially review the issue/change to determine if a creditworthiness evaluation is necessary. If so, WAPA will apply the criteria set forth in Section 3.4 of this Exhibit I to evaluate the impact of the issue/change. If WAPA determines that, based on an adverse material change, a Customer's ability to make payments under this Agreement is in substantial doubt, it will determine the Customer non-creditworthy and document the decision. A Customer deemed non-creditworthy will be required to provide collateral in accordance with this Exhibit I.

5.3 The Customer will provide WAPA a notice of adverse material changes in its financial condition (and, as applicable, the financial condition of its guarantor) within ten (10) calendar days from the time the Customer learns of an adverse material change. In addition, WAPA may, through its own efforts, learn of occurrences or events that it may consider an adverse material change.

5.4 In the case of a failure by a Customer to report an event or occurrence that results in a Customer experiencing significant financial hardship or distress,

but who is otherwise current on its contractual payments, WAPA will consult with the Customer and consider the circumstances surrounding the failure to report before making any decision on creditworthiness.

6. COLLATERAL SECURITY:

6.1 In the event WAPA determines a Customer is non-creditworthy in accordance with Section 3.5, WAPA will notify the Customer in writing of its determination as well as the basis for its determination. The Customer must provide collateral within thirty (30) calendar days of receipt of the initial written notice provided by WAPA under Section 3.5 above (or as otherwise agreed in writing between the Customer and WAPA's CFO).

6.2 The required amount of security will be based on the maximum total estimated service charge for outstanding service provided by WAPA under this Agreement, but not yet paid by the Customer, plus an advance of sixty (60) calendar days of estimated service under this Agreement as collateral. WAPA shall have the right to liquidate or draw upon all or a portion of the Customer's collateral provided in order to satisfy the Customer's total net obligation to WAPA. The Customer shall within five (5) business days, or as agreed in writing between WAPA and the Customer, replace any liquidated or drawn-upon collateral. Upon the completion of twelve (12)

consecutive months of timely payments under this Agreement, WAPA shall credit the Customer the advanced collateral. If a Customer provides collateral consisting of advance payments for service, WAPA will not collect nor credit interest on such collateral.

6.3 Acceptable collateral includes:

6.3.1 Payment in advance for service; or

6.3.2 An unconditional and irrevocable standby letter of credit as security to meet the Customer's responsibilities and obligations. If this form of collateral is used, it will comply with the requirements as stated in the Uniform Customs and Practice for Documentary Credits; or

6.3.3 An irrevocable and unconditional corporate guaranty from an entity that satisfies the creditworthiness requirements.

7. SUSPENSION OF SERVICE:

7.1 If a Customer fails to provide collateral as set forth above, WAPA may suspend or terminate service under this Agreement to the Customer no sooner than fifteen (15) business days after WAPA notifies the Customer

of the suspension of service. The suspension of service shall continue until the Customer provides collateral.

- 7.2 Such a suspension of service will not relieve the Customer of liability for minimum charges, if applicable, during the time service is so suspended.
- 7.3 The rights reserved to WAPA herein shall be in addition to all other remedies available to WAPA, either by law or in equity, for the breach of any of the terms hereof.
8. NOTICE REQUIREMENTS: Any notice, demand, or request specifically required by these Creditworthiness Procedures 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 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 Section 8, the sending Party shall keep a contemporaneous record of such communications and shall verify receipt by the other Party.

9. EXHIBIT REVISIONS: This Exhibit I may be modified by written instrument signed by the Parties, as provided for in Section 21 of the Agreement.