

CONTRACT NO. 21-DSR-13092

AMONG

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

AND

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Desert Southwest Region**

AND

ARIZONA PUBLIC SERVICE COMPANY

AND

**DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES**

AND

NEVADA POWER COMPANY d/b/a NV ENERGY

AND

**SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER
DISTRICT**

AND

TUCSON ELECTRIC POWER COMPANY

FOR

**NAVAJO PROJECT
PACIFIC NORTHWEST-PACIFIC SOUTHWEST INTERTIE PROJECT**

**DECOMMISSIONING OF A PHASE SHIFTING TRANSFORMER
AT LIBERTY SUBSTATION**

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DISTRICT**

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TUCSON ELECTRIC POWER COMPANY

FOR

**DECOMMISSIONING OF PHASE SHIFTING TRANSFORMER
AT LIBERTY SUBSTATION**

1. **PREAMBLE:** This Contract No. 21-DSR-13092 for the decommissioning of the Phase Shifting Transformer at Liberty Substation is made this _____ of _____, 20__ (Contract), among the UNITED STATES OF AMERICA, herein after referred to as “United States” acting through the Secretary of the Interior, through the Commissioner, Bureau of Reclamation, their duly appointed successor or duly authorized representative, representing the United

States' interest in the Navajo Project, and acting by and through the Administrator of the Department of Energy, Western Area Power Administration, herein after referred to as "WAPA" or "Decommissioning Agent", represented by the officer executing this Contract or their duly appointed successor, representing the United States' interest in the Pacific Northwest-Pacific Southwest Intertie Project; ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation, hereinafter referred to as "Arizona"; DEPARTMENT OF WATER AND POWER, THE CITY OF LOS ANGELES, a department organized and existing under the Charter of the City of Los Angeles, a municipal corporation of the State of California, hereinafter referred to as "Los Angeles"; NEVADA POWER COMPANY d/b/a NV ENERGY, a Nevada corporation, hereinafter referred to as "NV Energy"; SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an agricultural improvement district organized and existing under the laws of the State of Arizona, hereinafter referred to as "Salt River Project"; and TUCSON ELECTRIC POWER COMPANY, an Arizona corporation, hereinafter referred to as "Tucson". The aforementioned entities with the exception of WAPA shall be collectively referred to as "Participants". Each of the Participants and WAPA may sometimes be referred to as a "Party" or Parties".

2. **EXPLANATORY RECITALS:**

- 2.1 On February 4, 1974, the Participants entered into the Navajo Project Pacific Northwest-Pacific Southwest Intertie Project for the Installation, Operation, Maintenance and Replacement for the Phase Shifting Transformer at the Liberty Substation Contract No. 14-06-300-2438, as amended from time to

time (Contract 2438), for the installation, operation, maintenance and replacement of the Phase Shifting Transformer at Liberty Substation as the most economical method of controlling the division of power flow between the Mead-Liberty line and the Navajo Transmission System.

- 2.2 The original expiration of Contract 2438 was on December 23, 2019 however, the term was extended several times. The termination date of the existing Contract is September 22, 2021.
- 2.3 The extended term of Contract 2438 provided the Participants time to plan for the future of the Phase Shifting Transformer, including its possible Decommissioning, and to perform a path rating study for East of River, Palo Verde East, Navajo South Transmission Line, Path 46 (West of River), Path 81/SNTI (post Harry Allen – El Dorado), and other study cases used in compliance and planning (Study) as proposed by Arizona. The conclusion of the Study was that paths, projects, and systems within the overall interconnected system do not need a regulating Phase Shifting Transformer at Liberty Substation to control the flow of power and maintain Total Transfer Capability of the above-mentioned paths.
- 2.4 The Participants and WAPA conferred in good faith and now desire to enter into this Contract to clarify their respective rights and obligations with respect to the Decommissioning of the Phase Shifting Transformer at Liberty Substation (Work).

3. **AGREEMENT:** In consideration of the mutual obligations and covenants set forth herein, the sufficiency of which is hereby acknowledged, the Participants and WAPA agree to the terms and conditions set forth in this Contract.

3.1 This Contract supersedes all prior discussions, oral and written, between and among the Participants and WAPA with respect to the subject matter hereof.

3.2 Project Agreements: This Contract does not modify, terminate, or replace the Project Agreements.

4. **TERM OF CONTRACT:**

4.1. This Contract shall become effective at midnight on September 22, 2021 and shall remain in effect until such time as Decommissioning is complete and WAPA has finalized its obligations under subsection 9.4, if applicable.

4.2. Upon execution of this Contract, WAPA will provide each Participant an invoice requiring each Participant to provide its Percentage Share of funding to WAPA (as Decommissioning Agent) on or before September 30, 2023, for Decommissioning the Phase Shifting Transformer as documented in Exhibit A, attached hereto.

5. **DEFINITIONS:** The following terms, when used herein and in the Exhibits and Attachments as attached, shall have the meanings specified:

5.1 Agent Services: Perform or supervise the performance of the Decommissioning; coordinate and discuss with the Participants matters arising under this Contract to include invoicing for payment; obtain and maintain all Permits and rights-of-way; and procure goods or services necessary to complete the Work.

- 5.2 Breach: The failure of a Party to perform any material term or condition of this Contract pursuant to Section 11, herein.
- 5.3 Co-Tenants: Any one or all of the Participants other than the United States.
- 5.4 Decommission(ing): Removal and disposition of the above-grade structures and equipment as needed. Upon completion of the structure and equipment removal, WAPA will perform or have performed an environmental assessment to ensure the site is contaminant-free. Disposition of personal property will be accomplished in compliance with federal law and standards.
- 5.5 Decommissioning Agent: Western Area Power Administration is the Decommissioning Agent under this Agreement. WAPA is responsible for the operation and maintenance of a component of the Navajo Transmission System in accordance with the Project Agreements which includes the Phase Shifting Transformer at Liberty Substation
- 5.6 Default: The failure of a breaching Party to cure a Breach in accordance with Section 11, herein.
- 5.7 Dispute: A disagreement, dispute, controversy, or claim arising under or relating to this Contract that has been identified by a Party in a written notice submitted to all other Parties.
- 5.8 Extension Lease: The Extension Lease dated November 29, 2017 with a commencement date of December 23, 2019, by and between the Navajo Nation and the Co-Tenants.

- 5.9 Liberty Substation Agreement: The Contract for Installation, Operation, Maintenance and Replacement of a Phase Shifting Transformer at Liberty Substation (Contract No. 2438).
- 5.10 Material: A change, event, development, circumstance, condition, occurrence, or effect that has occurred or reasonably be expected to occur, that significantly impacts the project.
- 5.11 North American Electric Reliability Corporation (NERC) Glossary of Terms: The current NERC Glossary of Terms used in NERC reliability Standards.
- 5.12 Participant(s): One or more entities, including the United States, Arizona, Los Angeles, NV Energy, Salt River Project, and Tucson.
- 5.13 Percentage Share: The percentage of financial responsibility of each Participant.
- 5.14 Phase Shifting Transformer: That phase shifting transformer at Liberty Substation which is the subject of this Contract and which controls the division of power flow ratings from the Mead-Liberty line and between the Navajo Southern Transmission System and the Navajo Western Transmission System.
- 5.15 Project Agreements: The Amended and Restated Navajo Co-Tenancy Agreement, the §323 Grants, the Amended and Restated Navajo Southern Transmission System Operating Agreement, the Amended and Restated Navajo Western Transmission System Operating Agreement, other grants of rights-of-way and easements for the East of River Transmission System

facilities, the Extension Lease, and associated amendments, and successor agreements.

- 5.16 §323 Grants: Grants of easements and rights-of-way, when issued, by the United States to the Co-Tenants for rights-of-way across Navajo Nation lands pursuant to 25 U.S.C. §323.
- 5.17 Total Transfer Capability: The amount of electric power that can be moved or transferred reliably from one area to another area of the interconnected transmission systems by way of all transmission lines (or paths) between those areas under specified system conditions as the meaning given in the NERC Glossary of Terms used in NERC Reliability Standards, as may be revised from time to time.
- 5.18 Work: The activities necessary to Decommission the Phase Shifting Transformer at Liberty Substation.

6. **INTEREST AND LIABILITIES:**

- 6.1 Interest of the Decommissioning Agent. Prior to Decommissioning, the Decommissioning Agent will operate, for its use and benefit and at its own cost, the Phase Shifting Transformer at Liberty Substation.
- 6.2 Liability of the Participants. No Participant shall incur any additional liability or cost after WAPA's receipt of payment for the Participant's Percentage Share for Decommissioning the Phase Shifting Transformer.
- 6.3 Funding by the Participant(s): All moneys paid to the Decommissioning Agent under this Contract will be maintained by the Decommissioning Agent and shall be used solely for the purpose of the Work. All interest earned and appreciation in value on such payments shall inure to the benefit of the Decommissioning Agent and all losses on such payments shall be at the risk of the Decommissioning Agent.

7. **DECOMMISSIONING AGENT'S RESPONSIBILITIES:**

- 7.1 The Participants agree that WAPA, as the Decommissioning Agent, shall undertake, as principal on its own behalf, the performance of Agent Services
- 7.2 The Decommissioning Agent will perform all of the following Work for Decommissioning the Phase Shifting Transformer at Liberty Substation:
- 7.2.1 Perform, or supervise the performance of, Decommissioning activities.
- 7.2.2 Invoice each Participant in advance for its respective Percentage Share of the Decommissioning costs, as set forth in Exhibit A, for the removal and disposition of the Phase Shifting Transformer and

environmental clean-up necessary to restore the land to its original condition.

- 7.2.3 Furnish or contract for the procurement of goods or services necessary for implementation of the Work.
- 7.2.4 Obtain, administer and maintain all permits and rights-of-way, and cause the same to be replaced or renewed, as applicable, to the extent necessary or appropriate for performance of the Work.
- 7.2.5 Keep and maintain accurate books and records of its activities as the Decommissioning Agent.
- 7.2.6 Perform all other obligations and duties that are assigned herein to the Decommissioning Agent or that are reasonably necessary in connection with the performance of its obligations and duties hereunder.

8. **PARTICIPANTS RESPONSIBILITIES:**

- 8.1 Each Participant agrees to pay its Percentage Share of Decommissioning costs in accordance with Contract 2438 as detailed in Exhibit A, attached hereto. Participants shall submit such payments to WAPA on or before September 30, 2023.
- 8.2 The Participants understand that pursuant to Subsection 2.4, herein the Phase Shifting Transformer is not required to control the division of power flow between the Mead-Liberty line and the Navajo Transmission System and the regulating Phase Shifting Transformer at Liberty Substation is no longer required. The rights of the Decommissioning Agent to schedule power over

the Mead-Liberty line, which includes the existing East of River Path 49 rating, shall be unaffected upon execution of this Contract or by the future Decommissioning of the Phase Shifting Transformer.

8.3 Cooperation of the Participants. Each Participant will reasonably cooperate with the Decommissioning Agent and with each other to facilitate Decommissioning Agent's performance of the Work.

9. **COMPENSATION:** The Participants shall advance the estimated cost specified in Exhibit A of this Contract to WAPA to perform the Work described in the Contract.

9.1 Information for payment sent via electronic funds transfer, New York Federal Reserve Bank:

ABA (Routing Identifier): 021030004

ALC (Agency Locator Code): 89001602

9.2 Information for payment sent via automated clearing house, Richmond Federal Reserve Bank:

ABA (Routing Identifier): 051036706

Account Number: 312003

9.3 WAPA shall apply the funds to the cost of performing the Work identified in the Contract. WAPA shall be under no obligation to perform any Work until such funds have been received and WAPA determines that Work shall commence.

9.4 Upon completion of all Work pursuant to this Contract, WAPA shall review the costs incurred and if WAPA's actual costs are less than the funds received by WAPA from the Participants, such remaining funds, without

interest, shall be returned to the Participants as soon as practicable.

10. **DISPUTES:** Disputes under this Contract among the Parties shall be resolved in accordance with this Section 10 and Provision 38 of the General Power Contract Provisions. Any dispute arising under or relating to this Contract between the Parties shall, at the request of any Party, be discussed for resolution. The Parties will use reasonable efforts to resolve disputes amicably within thirty (30) calendar days of such request.

11. **DEFAULT AND REMEDIES:**

11.1 **Event of Default:** An Event of Default means a failure by a Party to perform a Material obligation in accordance with the provisions of this Contract.

Each of the following events will be an Event of Default:

11.1.1 Failure to make payment in accordance with Subsection 8.1. Failure by a Participant to make payment required under the terms of this Contract within twenty (20) calendar days after receipt of written notice from the Decommissioning Agent that the Participant has failed to make a payment owed or due.

11.1.2 Failure to perform. Failure by a Party to perform, in any Material respect not otherwise identified as an Event of Default, any Material obligation, duty or responsibility in accordance with the provisions of this Contract where such failure is not remedied within (a) thirty (30) calendar days after written notice thereof is provided to such Party or (b) such longer period, not to exceed ninety (90) calendar days, if the failure to perform is not susceptible to cure within such

thirty (30)-calendar day period and such Party diligently pursues the cure of such default to completion within such additional period as may be reasonably required to cure such failure to perform.

11.1.3 Breach of Representation, Warranty, or Covenants. A Party breaches a representation, warranty, or covenant it has made hereunder in any Material respect and such breach is not remedied within thirty (30) calendar days after written notice thereof is provided to such Party.

12. **AUTHORIZED REPRESENTATIVES:** Each Party shall, by written notice to all other Parties, designate the representative(s) who is (are) authorized to act on its behalf with respect to those matters contained herein which are the functions and responsibilities of its authorized representative(s). Any Party may change the designation of its authorized representative(s) upon notice to all other Parties.

13. **NOTICES AND COMMUNICATIONS:** Where notice is required to be given, and no notice period is herein specified, such notice shall be given to the Decommissioning Agent as far in advance as is reasonably practicable. Any notice provided under this Section 13 shall be delivered to:

Decommissioning Agent:

Department of Energy
Western Area Power Administration
Desert Southwest Regional Office
P.O. Box 6457
Phoenix, AZ 85005-6457
Attention: Senior Vice President and Regional Manager

14. **EXHIBITS:** The initial exhibit to this Contract may be amended or revised from time to time upon mutual written agreement by the Parties and is attached to this

Contract and incorporated by reference as if fully set forth herein. New exhibits may be added in the future, as required, and made part of this Contract by mutual written agreement of the Parties.

15. **ATTACHMENTS**: Inasmuch as certain terms of this Contract may change during its term, they will be set forth in attachments as formulated and modified from time to time. Changes, additions, or modifications to the attachments shall be reflected in new or revised attachments and will be distributed in accordance with Provision 40 of the General Power Contract Provision. New attachments may be added in the future, as required, and shall be made a part of this Contract.
16. **GENERAL POWER CONTRACT PROVISIONS (GPCPs)**: The GPCPs, effective September 1, 2007, attached hereto, are hereby made a part of this Contract the same as if they had been expressly set forth herein; and provided, that if any provisions in the GPCP are in conflict with this Contract, the terms of this Contract shall control.
17. **SURVIVAL**: Notwithstanding the termination or expiration of this Contract, any obligations previously incurred in accordance with this Contract, including any obligation to pay money incurred prior to such termination or expiration, will be preserved until satisfied. The terms and conditions of this Contract shall survive the termination or expiration hereof as necessary to give effect to the Parties' intent.
18. **RELATIONSHIP OF THE PARTIES**: Except to the extent otherwise provided herein, the covenants, obligations, and liabilities of the Parties are intended to be several and not joint or collective, and nothing herein contained shall ever be construed to create an association, joint venture, trust, or partnership, or to impose a

trust or partnership covenant, obligation, or liability on or with regard to any of the Parties. Each Party shall be responsible for its own covenants, obligations, and liabilities as herein provided. No Party shall be under the control of or shall be deemed to control the other Party. No Party shall be the agent of or have a right or power to bind the other Party without its express written consent, except as expressly provided in this Contract. Except as provided herein, no term of this Contract is intended to, or shall be for the benefit of, or construed to create rights in, or grant remedies to, any person or entity not a Party hereto.

19. **EXECUTION BY COUNTERPARTS:** This Contract may be executed in any number of counterparts and, upon execution and delivery by each Party, the executed and delivered counterparts together shall have the same force and effect as an original instrument as if all Parties had signed the same instrument. Any signature page of this Contract may be detached from any counterpart of this Contract without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Contract identical in form hereto, by having attached to it one (1) or more signature pages.
20. **AUTHORITY TO EXECUTE:** Each individual signing this Contract shall certify that the Party represented has duly authorized such individual to execute the Contract such that it binds and obligates the Party.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties have caused this Contract No. 21-DSR-13092,
to be effective in accordance with Section 4, herein.

THE UNITED STATES OF AMERICA

By _____

Jacklynn L. Gould, P.E.

Title Regional Director
Lower Colorado Basin Region
U.S. Bureau of Reclamation LCR

Date: _____

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

By _____

Jack D. Murray

Title Acting Senior Vice President and
Desert Southwest Regional Manager

Date: _____

ARIZONA PUBLIC SERVICE COMPANY

Signature: _____

Name: Rinly Moolakatt

Title: Director, Engineering T&D

Date: _____

IN WITNESS WHEREOF, the Participants have caused this Contract No. 21-DSR-13092, to be effective in accordance with Section 4, herein.

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES

APPROVED AS TO FORM AND LEGALITY
MICHAEL N. FEUER, CITY ATTORNEY

April 1, 2022

BY Syndi Driscoll
SYNDI DRISCOLL
DEPUTY CITY ATTORNEY

BOARD OF WATER AND POWER
COMMISSIONERS OF THE CITY OF LOS ANGELES

By _____
MARTIN L. ADAMS
General Manager and Chief Engineer

Date _____

and _____
Chante L. Mitchell
Board Secretary

NEVADA POWER COMPANY, d/b/a NV Energy

By _____
Josh Langdon
Vice President, Transmission

Date: _____

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By _____
John D. Coggins

Its: Associate General Manager &
Chief Power System Executive
Date: _____

IN WITNESS WHEREOF, the Participants have caused this Contract No. 21-DSR-13092,
to be effective in accordance with Section 4, herein.

TUCSON ELECTRIC POWER COMPANY

By _____
Eric Bronner, Senior Director,
System Integration and
Operations

Date: _____

PARTICIPANTS PERCENTAGE SHARE

1. This Exhibit A, under and as a part of Contract No. 21-DSR-13092 (Contract), shall remain in effect until superseded by another Exhibit A; provided this Exhibit A, or any superseding Exhibit A, shall terminate upon expiration of the Contract.
2. The Percentage Share for the tasks identified in Section 7 of this Contract to perform the Work are listed in the following table:

Participant Name	Share Percentage	Percentage Share of Cost
Arizona Public Service Company	14%	\$115,737.57
Los Angeles Department of Water and Power	21.2%	\$175,259.75
Nevada Power Company	11.3%	\$ 93,416.75
Salt River Project	21.7%	\$179,393.24
Tucson Electric Power	7.5%	\$ 62,002.27
United States Bureau of Reclamation	24.3%	\$200,887.36
Total:	100.0%	\$826,696.94

4. Upon execution of the Contract and invoice from WAPA, each Participant will remit its Percentage Share of the costs to the Decommissioning Agent for the Work. These funds will be provided in accordance with Section 4 and 9 of this Contract.
5. This Exhibit A to Contract No. 21-DSR-13092 may be modified in accordance with Section 14 of this Contract.

WESTERN AREA POWER ADMINISTRATION
GENERAL POWER CONTRACT PROVISIONS

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*Legal Citation Revised September 1, 2007

WESTERN AREA POWER ADMINISTRATION
GENERAL POWER CONTRACT PROVISIONS

I. APPLICABILITY.

1. Applicability.

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

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

II. DELIVERY OF SERVICE PROVISIONS.

2. Character of Service.

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

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

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

4. Continuity of Service.

Electric service will be supplied or transmitted continuously except for: (1) fluctuations, interruptions, or reductions due to uncontrollable forces, as defined in Provision 34 (Uncontrollable Forces) herein, (2) fluctuations, interruptions, or reductions due to operation of devices installed for power system protection; and (3) temporary fluctuations, interruptions, or reductions, which, in the opinion of the party supplying the service, are

necessary or desirable for the purposes of maintenance, repairs, replacements, installation of equipment, or investigation and inspection. The party supplying service, except in case of emergency, will give the party to whom service is being provided reasonable advance notice of such temporary interruptions or reductions and will remove the cause thereof with diligence.

5. Multiple Points of Delivery.

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

6. Metering.

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

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

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

6.4 If inspections and tests of a meter used by Western for billing or other

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

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

7. Existence of Transmission Service Contract.

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

8. Conditions of Transmission Service.

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

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

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

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

8.5 If Western notifies the Contractor that electric service provided for under the contract cannot be delivered to the Contractor because of an insufficiency of capacity available to Western in the facilities of others over which service under the contract is supplied, then the

Contractor may terminate service under the contract upon not less than sixty (60) days written notice given to Western prior to the date on which said capacity ceases to be available to Western, but not thereafter.

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

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

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

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

III. RATES, BILLING, AND PAYMENT PROVISIONS.

11. Change of Rates.

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

later than two (2) years after the effective date of the new rate. Service provided by Western shall be paid for at the new rate regardless of whether the Contractor exercises the option to terminate service.

12. Minimum Seasonal or Annual Capacity Charge.

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

13. Billing and Payment.

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

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

13.3 Payments of bills issued by Western are due and payable by the Contractor before the close of business on the twentieth (20th) calendar day after the date of issuance of each bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday. Bills shall be considered paid when payment is received by Western. Bills will be paid electronically or via the Automated Clearing House method of payment unless a written request to make payments by mail is submitted by the Contractor and approved by Western. Should Western agree to accept payments by mail, these payments will be accepted as timely and without assessment of the charge provided for in Provision 14 (Nonpayment of Bills in Full When Due) if a United States Post Office first class mail postmark indicates the payment was mailed at least three (3) calendar days before the due date.

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

14. Nonpayment of Bills in Full When Due.

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

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

15. Adjustments for Fractional Billing Period.

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

16. Adjustments for Curtailments to Firm Service.

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

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

billing period involved.

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

IV. POWER SALES PROVISIONS.

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

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

18. Distribution Principles.

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

19. Contract Subject to Colorado River Compact.

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

V. FACILITIES PROVISIONS.

20. Design Approval.

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

21. Inspection and Acceptance.

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

22. As-Built Drawings.

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

23. Equipment Ownership Markers.

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

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

24. Third-Party Use of Facilities.

The Contractor shall notify Western of any proposed system change relating to the facilities governed by the contract or allowing third-party use of the facilities governed by the contract. If Western notifies the Contractor that said system change will, as solely determined by Western, adversely affect the operation of Western's system the Contractor shall, at no cost to Western, provide a solution to said adverse effect acceptable to Western.

25. Changes to Western Control Facilities.

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

26. Modification of Western Facilities.

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

27. Transmission Rights.

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

pursuant to the contract.

28. Construction and Safety Procedures.

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

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

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

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

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

29. Environmental Compliance.

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

30. Responsibility for Regulated Materials.

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

VI. OTHER PROVISIONS.

31. Authorized Representatives of the Parties.

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

32. Effect of Section Headings.

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

33. Operating Guidelines and Procedures.

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

34. Uncontrollable Forces.

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

35. Liability.

35.1 The Contractor hereby agrees to indemnify and hold harmless the United States, its employees, agents, or contractors from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the Contractors', its employees', agents', or subcontractors' construction, operation, maintenance, or replacement activities under the contract.

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

36. Cooperation of Contracting Parties.

If, in the operation and maintenance of their respective power systems or electrical equipment and the utilization thereof for the purposes of the contract, it becomes necessary by reason of any emergency or extraordinary condition for either party to request the other to furnish personnel, materials, tools, and equipment for the accomplishment thereof, the party so requested shall cooperate with the other and render such assistance as the party so requested may determine to be available. The party making such request, upon receipt of properly itemized bills from the other party, shall reimburse the party rendering such assistance for all costs properly and

reasonably incurred by it in such performance, including administrative and general expenses, such costs to be determined on the basis of current charges or rates used in its own operations by the party rendering assistance. Issuance and payment of bills for services provided by Western shall be in accordance with Provisions 13 (Billing and Payment) and 14 (Nonpayment of Bills in Full When Due) herein. Western shall pay bills issued by the Contractor for services provided as soon as the necessary vouchers can be prepared which shall normally be within twenty (20) days.

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

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

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

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

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

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

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

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

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

38. Choice of Law and Forum.

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

39. Waivers.

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

40. Notices.

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

41. Contingent Upon Appropriations and Authorization.

41.1 Where activities provided for in the contract extend beyond the current fiscal year, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the United States' obligations under the contract. In case such appropriation is not made, the Contractor hereby releases the United States from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

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

42. Covenant Against Contingent Fees.

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

43. Contract Work Hours and Safety Standards.

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

44. Equal Opportunity Employment Practices.

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

45. Use of Convict Labor.

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