

CONTRACT NO. 15-RMR-2633

BETWEEN

CITY OF GILLETTE, WYOMING

AND

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

LOVELAND AREA PROJECTS

FOR

FIRM ELECTRIC SERVICE

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1. PREAMBLE: This Contract is made this _____ day of _____ 2015, pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388); June 25, 1910 (36 Stat. 835); December 4, 1924 (43 Stat. 672); August 9, 1937 (50 Stat. 564, 595); August 4, 1939 (53 Stat. 1194); December 22, 1944 (58 Stat. 887); August 16, 1962 (76 Stat. 389); October 27, 1974 (88 Stat. 1486, 1497) August 4, 1977 (91 Stat. 565); October 24, 1992 (106 Stat. 2776, 2799-2803), 42 U.S.C. 7275-7276c; and acts amendatory or supplementary to the foregoing Acts between the UNITED STATES OF AMERICA, acting by and through the Administrator, Western Area Power Administration, Department of Energy, hereinafter called Western, represented by the officer executing this Contract or a duly appointed successor; and the CITY OF GILLETTE, WYOMING, a municipality duly organized and existing under and by virtue of the laws of the State of Wyoming, hereinafter called Contractor, its successors and assigns; each sometimes hereinafter individually called the Party and both sometimes hereinafter collectively called the Parties.

2. EXPLANATORY RECITALS:

- 2.1 The United States Bureau of Reclamation operates certain Federal generation facilities known as the Pick-Sloan Missouri Basin Program-Western Division and the Fryingpan-Arkansas Project.
- 2.2 Western markets and transmits the electric power generated at these Federal projects and collectively refers to the generation and transmission facilities of these projects as the Loveland Area Projects.
- 2.3 The electric power generated at the Loveland Area Projects is allocated under the Post-1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program-Western Division (51 FR 4012), hereinafter called the Criteria, published January 31, 1986.
- 2.4 The Energy Planning and Management Program, published by Western in the Federal Register at 60 FR 54151, dated October 20, 1995, as it may be amended or superseded, hereinafter referred to as the Program, implements the requirements of Section 114, Title I of the Energy Policy Act of 1992. The Program requires Contractor to develop, or cause to be developed, an Integrated Resource Plan (IRP), or a Small Customer Plan. The Program also provides for Western to allocate resources and to create resource allocation pools.

- 2.5 Contractor desires to purchase, and Western is willing to furnish, firm electric service from the Loveland Area Projects under the terms and conditions stated herein.
- 2.6 Western and Contractor executed firm electric service Contract No. 87-LAO-115 (Contract 115) on September 28, 1987. Amendment No. 2 to Contract 115 placed Contract 115 in suspense and assigned Contractor's allocation to the Municipal Energy Agency of Nebraska (MEAN). In December 2014, Contractor and MEAN jointly requested in writing to terminate the assignment and reinstate, effective April 1, 2015, Contract 115.
- 2.7 Amendment No. 2 to Contract 115 provided "[a]ny new contract provisions generally applicable to Loveland Area Projects customers . . . will be included in this Contract upon reinstatement." Upon review of Contract 115, the Parties recognized Contract 115 would require numerous amendments. As a result, rather than amending Contract 115, the Parties now enter into this new Contract by which Western will provide firm electric service from the Loveland Area Projects to Contractor beginning on April 1, 2015, through the end of the calendar day on September 30, 2024.
3. AGREEMENT: The Parties agree to the terms and conditions set forth herein.

4. TERM OF CONTRACT:

4.1 This Contract shall become effective on the first day of the April 2015 billing period, and subject to prior termination as otherwise provided for herein, shall remain in effect until midnight of the last day of the September 2024 billing period. Contract 115 will terminate at the end of the calendar day on March 31, 2015.

4.2 Either Party has the right to terminate this Contract in its entirety if Contractor does not have firm delivery arrangements in place by April 1, 2015. Further, if at some later date Contractor loses its ability to deliver its allocation from Western's Point of Delivery, Western shall have the right to terminate this Contract in its entirety.

5. DEFINITIONS: The following terms, when used in this Contract with initial capitalization, shall have the following meanings:

5.1 Contract Rate of Delivery or CROD is the maximum amount of capacity Contractor is entitled to receive in the December billing period of each Winter Season and the July billing period of each Summer Season as set forth in Exhibit A.

- 5.2 Points of Delivery are the points described in Exhibit A where firm electric service furnished by the Loveland Area Projects is delivered to Contractor.
- 5.3 Minimum Hourly Delivery is the minimum percentage, as set forth in Exhibit A, of Contractor's CROD which Contractor shall accept each hour of each month of each season.
- 5.4 Monthly Capacity is the quantity of firm capacity, expressed in kilowatts (kW), that Western is committed to supply and Contractor is entitled to receive each month as set forth in Exhibit A.
- 5.5 Monthly Energy is the quantity of firm energy, expressed in kilowatthours (kWh), that Western is committed to supply and Contractor is entitled to receive each month as set forth in Exhibit A.
- 5.6 Seasonal Energy is the quantity of firm energy, expressed in kWh, that Western is committed to supply and Contractor is entitled to receive each Winter Season and each Summer Season as set forth in Exhibit A.
- 5.7 Summer Season is the six (6) month period from the first day of the April billing period through the last day of the September billing period of any calendar year.

5.8 Support Energy is non-Loveland Area Projects energy purchased on a pass-through cost basis at Contractor's request as set forth in Section 6.1.1 hereof.

5.9 Time shall be Mountain Standard Time or Mountain Daylight Time, as appropriate.

5.10 Winter Season is the six (6) month period from the first day of the October billing period of any calendar year through the last day of the March billing period of the following calendar year.

6. FIRM ELECTRIC SERVICE:

6.1 Seasonal Energy and CROD: Western, under the terms and conditions set forth herein and within the available capacity of the substation and transmission facilities to deliver the firm electric service at specific Points of Delivery, will furnish firm electric service to Contractor, at Contractor's Seasonal Energy with the Monthly Energy amounts, and Contractor's Contract Rate of Delivery with the Monthly Capacity amounts at the point(s) of delivery set forth in Exhibit A, less adjustments specified herein. Contractor shall not claim any portion of its Contract Rate of Delivery or its Monthly Capacity that is not scheduled pursuant to Section 11 as operating reserves.

6.1.1 Western will, to the extent that it is able to do so, provide, at Contractor's request, Support Energy on a pass-through cost basis. The terms of such purchases shall be set forth in a separate agreement between the Parties. Support Energy is in addition to the Monthly Energy and will be purchased up to an amount sufficient to provide the Monthly Capacity at Contractor's historical system load factor as submitted by Contractor or until Western's Loveland Area Projects' hydroelectric capability to support such purchases is reached, whichever occurs first. The sum of the Monthly Energy and Support Energy normally will not exceed the Monthly Capacity at Contractor's historical system load factor.

6.1.2 To the extent that Western must purchase capacity because of adverse hydrology to permit marketing of capacity at the 90 percent rather than the 99 percent probability level of Federal generation, Western may, at Contractor's option and to the extent Western is able to do so, purchase Contractor's proportionate share of such purchased capacity on a pass-through cost basis. The monthly maximum amounts of capacity to be purchased by Western for Contractor are set forth in Exhibit B.

6.1.2.1 If Contractor elects not to have Western purchase capacity on its behalf on a pass-through cost basis, Western may

reduce Contractor's Monthly Capacity as set forth in Exhibit A to reflect the difference between the 90 percent probability level and the amount of capacity available, but not below the 99 percent probability level.

6.1.2.2 Contractor shall inform Western in writing, at least ninety (90) days prior to the date of initial service hereunder, whether it wishes to have Western purchase capacity on its behalf. If Contractor decides to change its election hereunder, it may do so, at any time, by written notice not less than sixty (60) days prior to any Summer Season or Winter Season.

6.1.3 If Contractor elects not to take Pumped-Storage Energy pursuant to Section 8, Western may utilize the Pumped-Storage feature of the Loveland Area Projects. Western's purchases to restore the Pumped-Storage Energy account(s) will be incorporated into the Loveland Area Projects' rate base.

6.1.4 In the determination of the marketable capacity of the Loveland Area Projects, Western presumed that transmission system capacity losses would be offset by diversity. If diversity is insufficient to provide Loveland Area Projects' losses, all

contractors' Contract Rates of Delivery may, at the discretion and sole determination of Western, be reduced in each season on a prorated basis. If Western determines a reduction is necessary, all contractors will be given written notice that Loveland Area Projects' diversity has been insufficient to cover losses. Contractor will be given thirty (30) days to comment prior to the effective date of any such reduction.

6.1.5 The Monthly Energy may be increased from time to time at Western's discretion should short-term conditions allow. If the Monthly Energy is increased for any month, it will revert in subsequent months to the Monthly Energy as set forth in Exhibit A, unless Western otherwise agrees in writing.

6.1.6 Contractor may, upon request, provide its firming resources, to the extent Western would otherwise purchase firming resources, to meet Western's firm electric service obligations to Contractor. These arrangements will be provided for in a separate agreement.

6.2 Resource Adjustments:

6.2.1 On or after the first day of the April 2015 billing period, Western may, at its discretion and sole determination, adjust the Seasonal

Energy and CROD on five (5) years advance notice to Contractor; Provided, That such adjustment, if any, shall be made only in response to changes in hydrology and river operations. Proportional adjustments will be set forth in Exhibit A after a consultation process.

6.2.2 In the event that Western, at its sole discretion, determines that Seasonal Energy and CROD become available due to the imposition of penalties in accordance with the Program, Western may offer these resources to Contractor, subject to mutually acceptable withdrawal procedures. Western may, to limit administrative burden, wait until such time as it accumulates sufficient Seasonal Energy and CROD to justify offering these resources. These arrangements will be provided for in a separate agreement.

6.3 Monthly Commitments: The Monthly Energy and the Monthly Capacity are set forth in Exhibit A. Monthly Energy may not be transferred from month to month without revision of Exhibit A. All changes requested by Contractor at least sixty (60) days before the beginning of any season for which a change is requested to the Contract Rate of Delivery at the Points of Delivery shall be set forth in a revised Exhibit A.

- 6.4 Minimum Hourly Delivery: The Minimum Hourly Delivery as set forth in Exhibit A may be changed by Western to meet changing water release constraints, resource constraints, or seasonal hydrologic conditions and any such changes for more than one (1) year shall be set forth in Exhibit A. Contractor will be given at least thirty (30) days to comment prior to any such change.
- 6.5 Points of Delivery: Firm electric service furnished to Contractor will be delivered at the point(s) set forth in Exhibit A. Any transmission costs and associated losses incurred in the delivery of electric service to the Points of Delivery described in Exhibit A shall be the responsibility of Western, and any transmission costs and associated losses in the delivery of firm electric service beyond the Point(s) of Delivery shall be the responsibility of Contractor.
- 6.6 Metering: The point(s) of metering, metering voltage(s), and ownership of metering equipment shall be set forth in a Scheduling, Accounting, and Billing Procedure entered into pursuant to Section 11. Insofar as the firm electric service delivered hereunder may be measured at point(s) and/or voltage(s) other than the Point(s) of Delivery, the measured amount(s) may be adjusted for losses between the Point(s) of Delivery and the point(s) of metering as set forth in the Scheduling, Accounting, and Billing Procedure.

7. PASS-THROUGH OF COSTS:

7.1 Trust Account: If Western notifies Contractor that it intends to purchase capacity on Contractor's behalf pursuant to Contractor's election under Section 6.1.2 hereof, Western will establish a trust account for Loveland Area Projects' contractors for whom such purchases are made. If applicable, Western will require Contractor to deposit an amount at least sufficient for one (1) month of the cost of purchasing this capacity, as determined by Western, within thirty (30) calendar days from the date on which Western notifies Contractor that such capacity must be purchased. Failure to deposit said funds will result in Contractor losing the option to have Western make such purchases for the season elected. If Contractor has paid in excess of the actual average cost of the purchased pass-through of cost capacity accepted by Contractor during a season, Western will credit such excess toward the payment of Contractor's next power bill. If reconciliation reflects an amount due to Western by Contractor for pass-through of cost capacity, Western will bill Contractor for such amount at the end of a season unless otherwise agreed.

7.2 Pumped-Storage Energy Account: If Contractor fails or refuses to restore its Pumped-Storage Energy Account to its initial level at the end of each

Summer Season and each Winter Season as required pursuant to Section 8, Western shall, to the extent that it is able to do so, purchase the energy required at Contractor's expense and will bill Contractor an amount equal to Western's cost to provide said energy. These amounts of energy shall be considered use of energy in excess of Western's contract obligation under Provision 3 of the General Power Contract Provisions attached hereto.

7.3 Pass-Through of Cost Accounting: The amounts of capacity and energy provided on a pass-through of cost basis as described in Sections 6.1.1 and 6.1.2 shall be separately identified in each monthly power bill and shall be billed at Western's Loveland Area Projects' average cost of such purchases during the month in which such service is provided. Payments of monthly bills for service provided under Section 6.1.2 hereof shall be credited upon receipt to the trust account.

8. PUMPED-STORAGE ENERGY:

8.1 As of the effective date of this Contract, Contractor shall have 3.9 kilowatthours per kilowatt of its Contract Rate of Delivery for the Summer Season and 4.4 kilowatthours per kilowatt of its Contract Rate of Delivery for the Winter Season in a Pumped-Storage Energy account.

- 8.2 Contractor may schedule energy to or from Western for credit or debit to Contractor's Pumped-Storage Energy account in accordance with mutually agreed upon schedules which must be submitted to Western normally twenty-four (24) hours in advance. Energy may be scheduled to Contractor by Western only when there is a positive balance in Contractor's Pumped-Storage Energy account.
- 8.3 Contractor shall return 1.4 kilowatthours to Western at Malta Substation or at such other points on the Loveland Area Projects' transmission system as the Parties mutually agree for each kilowatthour scheduled from Contractor's Pumped-Storage Energy account. All return energy shall be accounted for as if it were transmitted to Malta Substation regardless of the point(s) at which it is actually delivered. The 1.4 kilowatthour return for every 1.0 kilowatthour of Pumped-Storage Energy ratio will be reviewed and may be adjusted by Western periodically to more accurately reflect actual operating experience or conditions.
- 8.4 For contractors not directly interconnected with the Loveland Area Projects' transmission system at Malta Substation, the losses and transmission charges set forth in Exhibit C hereto will be assessed on schedules to and from Western for credit or debit to Contractor's Pumped-Storage Energy account.

- 8.5 Transmission over the system(s) of third parties shall be made under the terms and conditions of contracts between Contractor and said third parties. Contractor shall provide Western a copy of such proposed contract(s) at least thirty (30) days prior to execution and will provide Western a copy of the executed contract(s) prior to requesting Pumped-Storage Energy service hereunder.
- 8.6 Energy will normally be scheduled to Western for credit to Contractor's Pumped-Storage Energy account between 2200 hours on any day and 0800 hours of the next succeeding day. These hours are subject to change at Western's sole discretion should operating experience or conditions indicate such a change is necessary.
- 8.7 Contractor's Pumped-Storage Energy account shall never exceed the initial amount of energy and the account must be restored to this level at the end of each Summer Season and Winter Season.
- 8.8 Unless Western otherwise agrees in writing, the rate of energy scheduled to Western for credit to Contractor's Pumped-Storage Energy account shall never exceed 1.4 times Contractor's Contract Rate of Delivery. If Western determines that such schedules must be curtailed due to Western's inability to absorb off-peak energy, such schedules shall be curtailed for all Loveland Area Projects' contractors on a pro rata basis.

8.9 Contractor's total hourly schedule of Monthly Energy and Pumped-Storage Energy shall never exceed Contractor's Monthly Capacity.

9. SCHEDULE OF RATES: Contractor shall pay Western for firm electric service furnished hereunder in accordance with the rates, charges, and conditions set forth in the General Power Contract Provisions and Rate Schedule L-F10, both attached hereto and made a part hereof, or any superseding rate schedules which are applicable.

10. CREDITWORTHINESS PROCEDURES: Contractor agrees to comply with Western's Creditworthiness Procedures, which are attached hereto and made a part of this Contract the same as if expressly set forth herein. The Creditworthiness Procedures may be superseded by any Creditworthiness Procedures as agreed to and executed by the Parties.

11. SCHEDULING, ACCOUNTING, AND BILLING PROCEDURES:

11.1 A written Scheduling, Accounting, and Billing Procedure shall be developed and agreed upon by the authorized representatives of the Parties by the date of initial service under this Contract. The Scheduling, Accounting, and Billing Procedure is intended to implement the terms of

this Contract but not to modify or amend it and is, therefore, subordinate to this Contract.

- 11.2 Deliveries of firm electric service hereunder may be scheduled in advance as determined by Western, on an hourly basis, emergencies excepted, and accounted for on the basis of such advance schedules in accordance with the Scheduling, Accounting, and Billing Procedure agreed upon in advance between the authorized representatives of the Parties. Said procedure will specify the conditions under which inadvertent deliveries, which are greater or less than scheduled deliveries, shall be corrected in later deliveries.
- 11.3 In the event Contractor fails or refuses to execute the initial Scheduling, Accounting, and Billing Procedure or any revised Scheduling, Accounting, and Billing Procedure which Western determines to be necessary due to changes in this Contract or the power system of either Party, Western will temporarily implement an essential Scheduling, Accounting, and Billing Procedure, as determined by Western, until mutually acceptable procedures have been developed and executed by the authorized representatives.

12. POWER FACTOR:

12.1 Contractor will be expected to maintain the power factor specified in the attached rate schedule or General Power Contract Provisions. If the applicable power factor standard is not complied with, Western, may, after giving the customer ninety (90) days to correct the condition or such additional time as is warranted by circumstances, make compensatory improvements at Contractor's expense to Western's system, or to Contractor's system with the agreement of Contractor. If Western is required to pay for delivery system improvements associated with power factor correction on the systems of its wheeling agents, which are attributable to conditions on the system of Contractor, Contractor shall pay for the cost of such improvements.

12.2 If the power factor requirements under the applicable rate schedule(s) and the General Power Contract Provisions are not the same, the more stringent provision will apply.

13. INTEGRATED RESOURCE PLANS AND SMALL CUSTOMER PLANS:

13.1 Contractor shall comply with the IRP or Small Customer Plan requirements, as applicable, in accordance with the Program.

- 13.2 Western shall administer the IRP or Small Customer Plan requirements, as applicable, in accordance with the Program.
- 13.3 Failure to comply with the IRP or Small Customer Plan requirements, after exhaustion of all administrative appeals, will result in the application of penalties as specified in the Program.
- 13.4 In the event that Western, or any successor agency, shall promulgate changes to the Program following its initial adoption as published in the Federal Register 60 FR 54151 (October 20, 1995), as amended, Contractor, by written notice to Western within ninety (90) days after the effective date of a Program change, may elect to terminate this Contract. The termination shall be effective one (1) year from the date of receipt of the notice by Western.
14. EXHIBITS: Inasmuch as certain provisions of this Contract may change during the term hereof, they will be set forth in exhibits as formulated and modified from time to time as agreed upon by the Parties. The initial Exhibits A, B, and C, and all future exhibits shall be attached hereto and made a part hereof, and each shall be in full force and effect in accordance with its terms unless superseded by a subsequent exhibit.

15. GENERAL POWER CONTRACT PROVISIONS: The General Power Contract Provisions effective September 1, 2007, attached hereto, are made a part of this Contract the same as if they had been expressly set forth herein; Provided, That Provisions 19 through 30 shall not be applicable herein.

The Parties have executed this Contract No. 15-RMR-2633 as of the day and year set forth in Section 1 above.

WESTERN AREA POWER ADMINISTRATION

By: _____
David Neumayer

Title: Vice President of Power Marketing
Rocky Mountain Region

Address: Western Area Power Administration
P.O. Box 3700
Loveland, CO 80539-3003

CITY OF GILLETTE, WYOMING

By: _____

Title: _____

Address: City of Gillette
P.O. Box 3003
Gillette, WY 82716

(SEAL)

Attest:

By: _____

Date: _____

RESOLUTION

BE IT RESOLVED by the City Council of the CITY OF GILLETTE, WYOMING, that _____ is hereby authorized to execute for and on behalf of the CITY OF GILLETTE, WYOMING, the attached Contract No. 15-RMR-2633 (Contract) with the Western Area Power Administration, which was duly presented to the City Council and which Contract is hereby approved.

(State of Wyoming) _____)ss
(County of Campbell)

I, _____, the duly appointed and qualified City Clerk of the CITY OF GILLETTE, WYOMING, do hereby certify that the foregoing is a true, accurate, and complete copy of a resolution duly passed and adopted at a regular meeting of the City Council of the CITY OF GILLETTE, WYOMING, held on _____, 2015.

Dated: _____

By: _____

Title: _____

(SEAL)