

Contract No. ##TX-####

OPERATION AND MAINTENANCE AGREEMENT

executed by the
UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
acting by and through the
BONNEVILLE POWER ADMINISTRATION
and
CUSTOMER NAME

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This OPERATION AND MAINTENANCE AGREEMENT (Agreement) is entered into by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (Bonneville), and CUSTOMER NAME (Customer), hereinafter individually referred to as "Party" and collectively as "Parties".

RECITALS

WHEREAS, the Parties desire to enter into an agreement providing for the operation and maintenance of facilities as detailed in this Agreement, and the Parties desire to provide herein for payment for the operation and maintenance of such facilities;

WHEREAS, the Energy Policy Act of 2005 (Act) authorized the Federal Energy Regulatory Commission (FERC) to approve Electric Reliability Standards with which users, owners and operators of the bulk power system are required to comply (Electric Reliability Standards);

WHEREAS, Bonneville will be performing for Customer certain activities that are now subject to the Electric Reliability Standards, and Bonneville agrees to be retained by Customer to perform and report to Customer on those activities in accordance with the Electric Reliability Standards, and to perform such other activities required of Customer by the Electrical Reliability Standards, and agreed to by Bonneville and Customer, all as more fully set forth herein;

WHEREAS, Customer is the Registered Entity with compliance responsibility for the Electric Reliability Standards applicable to the facilities described herein;

WHEREAS, Bonneville is authorized pursuant to law to operate and maintain transmission facilities and to enter into agreements to carry out such authority.

In consideration of the promises and mutual covenants and agreements herein contained, the Parties agree as follows:

1. TERM OF AGREEMENT

This Agreement shall become effective at 0000 hours on the date that the Agreement has been signed by both Parties (Effective Date) and shall continue in effect for no longer than 30 years after the Effective Date unless otherwise terminated by the Parties.

This Agreement may be terminated by X (days/months/years) prior written notice by either Party.

In the event that the Agreement is terminated, all liabilities incurred hereunder are hereby preserved until satisfied.

The following sentence is used only if this O&M Agreement is ~~replacing~~ terminating an existing Agreement(s).

This Agreement terminates ~~and replaces operation and maintenance obligations in its entirety~~ prior Agreement No. (s) ~~##TX-#####~~. All obligations incurred under Prior Agreement(s) shall be preserved until fully satisfied.

2. DEFINITIONS

When used in this Agreement, the following terms have the meaning shown below:

- (a) “Business Day” means any day that is normally observed by the Federal Government as a workday.
- (b) “Good Utility Practice” means 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. EXHIBITS

The following Exhibits are hereby incorporated into and made part of this Agreement:

- (a) Exhibit A Facilities and Equipment Operated and Maintained by Bonneville
- (b) Exhibit B One-Line Diagram
- (c) Exhibit C Plan and Profile Diagram
- (d) Exhibit D Notices

4. REVISION OF EXHIBITS

- (a) Bonneville may unilaterally revise Exhibit A pursuant to the notice requirements in Exhibit D to:
 - (1) incorporate FERC-approved changes to Electric Reliability Standards set forth in Exhibit A;
 - (2) document replacement or removal of facilities or equipment undertaken pursuant to Section 6; and
 - (3) incorporate revisions to charges described in Exhibit A.

- (b) ~~Bonneville may unilaterally revise Exhibit A to incorporate additional Electric Reliability Standards applicable to the equipment and facilities described in Exhibit A. Such revisions shall be effective seven (7) days after Customer receives written notice of such revision from Bonneville unless Customer provides objection by telephone to Bonneville within such period followed by written notice of such objection within five (5) days, in which case such revision shall be ineffective.~~

5. BILLING AND PAYMENT

(a) **Billing**

Bonneville shall bill Customer monthly for all products and services provided during the preceding month(s). Bonneville may send Customer an estimated bill followed by a final bill. The Issue Date is the date Bonneville electronically sends the bill to Customer. If electronic transmittal of the entire bill is not practical, Bonneville shall transmit a summary electronically, and send the entire bill by United States mail.

(b) **Payment**

Customer shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills, whether estimated or final, must be received by the 20th calendar day after the Issue Date of the bill (Due Date). If the 20th calendar day is a Saturday, Sunday, or federal holiday, the Due Date is the next Business Day.

If Customer has made payment on an estimated bill then:

- (1) if the amount of the final bill exceeds the amount of the estimated bill, Customer shall pay Bonneville the difference between the estimated bill and final bill by the final bill's Due Date; or
- (2) if the amount of the final bill is less than the amount of the estimated bill, Bonneville shall pay Customer the difference between the estimated bill and final bill by the 20th calendar day after the final bill's Issue Date.

If the 20th calendar day is a Saturday, Sunday, or federal holiday, the difference shall be paid by the next Business Day.

(c) **Late Payments**

After the Due Date, a late payment charge equal to the higher of:

- (1) the Prime Rate (as reported in the Wall Street Journal or successor publication, in the first issue published during the month in which payment was due) plus 4 percent, divided by 365; or
- (2) the Prime Rate times 1.5, divided by 365;

shall be applied each calendar day to any unpaid balance.

(d) **Termination**

If Customer has not paid its bill in full by the Due Date, it shall have 45 calendar days to cure its nonpayment by making payment, including any late payment charge, in full. If, thereafter, Customer does not provide payment within three Business Days after receipt of an additional written notice from Bonneville, and Bonneville determines in its sole discretion that Customer is unable to make the payments owed, then Bonneville may terminate this Agreement consistent with Section 1. Written notices sent under this section 4(d) must comply with Exhibit D.

(e) **Disputed Bills**

- (1) If Customer disputes any portion of a charge or credit on Customer's estimated or final bills, Customer shall provide written notice to Bonneville with a copy of the bill noting the disputed amounts. Notwithstanding whether any portion of the bill is in dispute, Customer shall pay the entire bill by the Due Date.
- (2) Unpaid amounts on a bill (including both disputed and undisputed amounts) are subject to the late payment charges provided above. Notice of a disputed charge on a bill does not constitute Bonneville's agreement that a valid claim under contract law has been stated.
- (3) If the Parties agree that Customer is entitled to a refund of any portion of the disputed amount, then Bonneville shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

6. OWNERSHIP OF FACILITIES AND EQUIPMENT

- (a) Unless joint ownership is indicated in Exhibit A, Customer is the sole owner and holds title to all facilities and equipment listed in Exhibit A. When joint ownership is indicated, all jointly owned equipment, facilities, and capital spare parts will be identified as such with co-ownership tags and signs.
- (b) Costs of operation, maintenance, replacement and removal, and the proceeds from the disposal, of jointly owned facilities will be allocated consistent with the ownership share percentages specified in Exhibit A.

7. OPERATION, MAINTENANCE AND REMOVAL OF CUSTOMER OWNED FACILITIES AND EQUIPMENT BY BONNEVILLE

- (a) Bonneville shall:
 - (1) operate and maintain the Customer owned facilities and equipment described in Exhibit A in the same manner in which Bonneville operates and maintains similar facilities and equipment owned by Bonneville, and in accordance with the Electric Reliability Standards listed in Exhibit A, as applicable to such facilities and equipment, including replacements necessary for compliance with such standards, and;
 - (2) operate and maintain Bonneville's power system control facilities (e.g.: Supervisory Control and Data Acquisition (SCADA)) which are necessary to integrate the Customer owned facilities and equipment described in Exhibit A with Bonneville's control system and, from time to time when Bonneville determines it is necessary, modify or replace such Bonneville power system control facilities.
- (b) Customer shall reimburse Bonneville for all costs, including replacement parts and labor, that Bonneville incurs for providing such operation and maintenance specified in section 6(a)(1) above and for modifying or replacing Bonneville power system control facilities described in section 6(a)(2) above.
- (c) Subject to applicable security requirements, Customer shall grant Bonneville and its authorized contractors timely access to its facilities to perform its obligations hereunder.
- (d) In the event of a major failure or obsolescence that renders any of the facilities and equipment described in Exhibit A unfit for service according to the principles of Good Utility Practice, the Parties shall use every reasonable effort in good faith to negotiate and execute a mutually acceptable agreement providing for the replacement, repair, or removal of such facilities and equipment with the expenses to be shared by the Parties in accordance with the ownership percentages specified in Exhibit A.

- (e) Customer agrees to share the cost of modifying or replacing any of the power system control equipment associated with the jointly-owned facilities specified in Exhibit A if and when Bonneville notifies Customer that such action is necessary to make the operation of such facilities compatible with the operation of Bonneville's facilities. Such costs will be shared in accordance with the ownership percentages specified in Exhibit A. Bonneville shall provide reasonable written notice to Customer consistent with the availability of facilities and budgetary planning. Any such modification or replacement of power system control equipment will be required only: (1) when Bonneville, in keeping with prudent utility practice, replaces or modifies similar equipment owned by Bonneville at the same location; (2) as a part of a programmed project involving a significant portion of Bonneville's system; (3) by mutual agreement of the Parties, or (4) for compliance with Electric Reliability Standards pursuant to Section 6(a)(1), above.
- (f) If requested by Customer or if Bonneville determines it is necessary, in carrying out its responsibilities under Section 6(a)(1) above, Bonneville shall, at Customer's expense, remove and return to Customer the salvable facilities and equipment which are owned by Customer as described in Exhibit A. After such removal, Bonneville may, at Customer's expense, return the Bonneville facilities altered under the installation contract described in Exhibit A, to the configuration (1) existing before such contract was executed, or (2) as mutually agreed by the Parties.

8. LIABILITY

- (a) If Bonneville's acts or omissions are responsible in whole or in part for Customer's failure to comply with Electrical Reliability Standards specified in Exhibit A as applicable to the facilities and equipment listed in Exhibit A, Bonneville shall bear a share of any monetary penalty based on its comparative fault determined pursuant to Section 9(g).
- (b) Except as specifically provided in Section 7(a) of this Agreement, in no event shall Bonneville be liable to Customer, its board of directors, officers, employees, agents or representatives for any lost or prospective profits or for any other special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement.

9. ADDITIONAL COMMITMENTS

- (a) Bonneville agrees to annually provide to Customer during each Calendar Year (Quarter 4):

- (1) Letter certifying Bonneville has operated and maintained equipment listed in Exhibit A at levels sufficient fors compliance with standards listed in Exhibit A with respect to the facilities and equipment listed in Exhibit A.
 - (2) Copy of programmatic documentation required by the standards listed in Exhibit A.
 - (3) Copy of records required by the standards listed in Exhibit A.
- (b) At Customer's request, Bonneville shall provide all items listed in (a) pursuant to Customer's requested deadlines.
 - (c) At the Customer's request, Bonneville shall provide any additional documentation as required by the standards listed in Exhibit A or as required by FERC, NERC or WECC.

10. FAILURE TO PERFORM

- (a) If Bonneville determines that it is not in compliance with one or more of the requirements in Section 6(a)(1) it shall notify Customer within 1 Business Day of such determination.
- (b) If Customer determines that any Electric Reliability Standards listed in Exhibit A have been violated with respect to facilities and/or equipment listed in Exhibit A, Customer will self report the violation(s) pursuant to WECC's Compliance Monitoring and Enforcement Program (CMEP).
- (c) Customer will coordinate with Bonneville to create the required Mitigation Plan as provided in WECC's CMEP. Customer will submit the mitigation plan and all related, required documentation to WECC.
- (d) Customer will notify Bonneville within ten (10) Business Days when a Notice of Alleged Violation is issued pursuant to the CMEP and indicate the proposed penalty amount.
- (e) Customer will not oppose any attempts by Bonneville to intervene in the CMEP proceedings conducted by WECC, NERC, or FERC.
- (f) Customer shall have the sole discretion to decide whether to proceed through the Settlement Process or the Hearing Process under the CMEP.
- (g) In determining whether and to what extent Bonneville is responsible for any part of monetary penalties imposed with respect to Customer's failure to comply with Electrical Reliability Standards specified in Exhibit A as applicable to the facilities and equipment listed in Exhibit A:

- (1) The Parties shall use good faith efforts to reach agreement on the proper amount, if any, of the monetary penalty that should be assumed by Bonneville due to Bonneville's comparative fault.
- (2) If the determination of the amount of monetary penalties to be assumed by Customer and Bonneville is not resolved after good faith efforts of the Parties to reach a resolution, the dispute may be submitted, upon mutual agreement of Customer and Bonneville, to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration rules. If Customer and Bonneville agree to submit the dispute to binding arbitration, each Party shall have discovery rights as set out in the Federal Rules of Civil Procedure. Judgment upon any award rendered by an arbitrator may be entered in any court or administrative body having appropriate jurisdiction. In order to keep Customer whole, the award shall include interest, from the date of payment by Customer, on the amount of such monetary penalty for which Bonneville is determined to be responsible. Interest shall be calculated as stated in Section 4(e)(3). The Parties shall equally share the cost of any arbitration process, including the cost of the arbitrator, court reporter, and room rental. Each Party shall be responsible for the cost of presenting its own case, including, without limitation, witnesses, attorneys, and consultants.

11. STANDARD PROVISIONS

- (a) **Relationship of the Parties**

Neither Party is the agent or principal of the other, nor are they partners or joint venturers. Each Party agrees that it will not represent that, in performing its obligations hereunder, it acts in the capacity of agent or principal of the other Party, nor that it is a partner or joint venturer with the other Party with respect to the subject matter of this Agreement.
- (b) **Amendments**

Except where this Agreement explicitly allows one Party to unilaterally amend a provision or exhibit, no amendment of this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.
- (c) **Assignment**

This Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld.

(d) **Entire Agreement**

This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.

(e) **No Third Party Beneficiaries**

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

(f) **Section Headings**

Section headings and subheadings appearing in this Agreement are inserted for convenience only and are not to be construed as interpretations of text.

(g) **Several Obligations**

Except where specifically stated in this Agreement, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective.

(h) **Uncontrollable Forces**

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force.

“Uncontrollable Force” means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force that prevents that Party from performing its contractual obligations under this Agreement and which, by exercise of that Party’s reasonable care, diligence and foresight, such Party was unable to avoid. Uncontrollable Forces include, but are not limited to:

- (1) strikes or work stoppage;
- (2) floods, earthquakes, or other natural disasters; terrorist acts; and
- (3) final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall: (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with Exhibit D, Notices.

(i) **Waivers**

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

(j) **Freedom of Information Act (FOIA)**

Bonneville may release information provided by Customer to comply with FOIA or if required by any other federal law or court order. For information that Customer designates in writing as proprietary, Bonneville will limit the use and dissemination of that information within Bonneville to employees who need the information for purposes of this Agreement.

(k) **Governing Law**

This Agreement shall be interpreted, construed and enforced in accordance with Federal law.

12. SIGNATURES

The Parties have caused this Agreement to be executed as of the date both Parties have signed this Agreement.

CUSTOMER NAME

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By: _____

By: _____

Name: _____
(Print/Type)

Name: **AE Name** _____
(Print/Type)

Title: _____

Title: **(Senior)** Transmission Account Executive _____

Date: _____

Date: _____

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**EXHIBIT A
FACILITIES AND EQUIPMENT OPERATED AND MAINTAINED BY BONNEVILLE**

Bonneville Implementation Responsibilities for Customer Compliance

Customer is responsible for compliance with all Electric Reliability Standards applicable to Customer. Bonneville is responsible for implementing Bonneville’s Operation and Maintenance program to achieve compliance with the standards listed below as applicable to the equipment listed below.

Customer may request an addition or change to the facilities and equipment to be operated and maintained by Bonneville, and Bonneville may, at its discretion, agree to such addition or change. Any revision must specify the facilities and equipment to be operated and maintained, location of the facilities and equipment, ownership of facilities and equipment, and sharing of maintenance and operation costs between the Parties.

If Bonneville determines that the charges specified in this Exhibit must be adjusted to conform to Bonneville’s current costs of operating and maintaining like facilities and equipment, Bonneville may unilaterally revise such charges upon ninety calendar days written notice to Customer.

Comment [C1]: Do we want to insert the requested Customer equipment No. column at this time? If so, what should it look like?

Equipment No.	Facility / Equipment Description	Electric Reliability Standard No. and Requirement	Installed under Contract No.	Annual Charge \$ ¹

Insert file path

¹ This amount is based on Bonneville’s Annual O&M Tables dated [insert date], based on average O&M expenses from fiscal years yyyy, yyyy, yyyy.

|

**EXHIBIT B
ONE-LINE DIAGRAM**

Substation facilities and equipment are described here.

Insert file path

DRAFT

|

**EXHIBIT C
PLAN AND PROFILE DIAGRAM**

Transmission lines are described here.

Insert file path

DRAFT

**EXHIBIT D
NOTICES**

1. NOTICES RELATING TO PROVISIONS OF THE AGREEMENT

Any notice required under this Agreement shall be in writing and shall be delivered in person or with proof of receipt by a nationally recognized delivery service or by United States Certified Mail. Notices are effective when received. Either Party may change the name or address for receipt of notice by providing notice of such change. The Parties shall deliver notices to the following person and address:

If to the Customer:

Customer Name
Customer Address
Customer City, State Zip
Attention: Customer Contact
Title:
Phone:
Fax:
E-mail:

If to Bonneville:

Attention: Transmission Account Executive
for Customer Name – TSE/TPP-2
Phone: (360) 619-6016
Fax: (360) 619-6940

If by First Class Mail:

Bonneville Power Administration
P.O. Box 61409
Vancouver, WA 98666-1409

If by Overnight Delivery Service:

Bonneville Power Administration – TSE/TPP-2
7500 NE 41st Street, Suite 130
Vancouver, WA 98662

2. FOR REPORTING OF COMPLIANCE DOCUMENTATION

If to the Customer:

Customer Name
Customer Address
Customer City, State Zip
Attention: Customer Contact
Title:
Phone:
Fax:
E-mail:

Insert file path