



**United States
Department of Energy**

**WESTERN AREA
POWER ADMINISTRATION**

**Desert Southwest
Regional Office**

AMENDED AND RESTATED IMPLEMENTATION AGREEMENT

BETWEEN

**UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Desert Southwest Customer Service Region
Boulder Canyon Project
AGREEMENT NO. 95-PAO-10616**

AND

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
AGREEMENT NO. 5-CU-30-P1128**

AND

**BOULDER CANYON PROJECT
ELECTRIC SERVICE CONTRACTORS**

**AMENDED AND RESTATED
BOULDER CANYON PROJECT
IMPLEMENTATION AGREEMENT**

between

The United States,

acting through

The Western Area Power Administration, Department of Energy

and

The Bureau of Reclamation, Department of the Interior,

and the parties identified in

Attachment 10.IA – Boulder Canyon Project Electric Service Contractors

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**AMENDED AND RESTATED BOULDER CANYON PROJECT
IMPLEMENTATION AGREEMENT**

1. **PARTIES:** The Parties to this Amended and Restated Boulder Canyon Project Implementation Agreement (Restated Agreement) are the United States of America, acting by and through the Administrator, Western Area Power Administration (Western) Department of Energy, represented by the officer executing this Restated Agreement or a duly appointed successor, and acting by and through the Commissioner, Bureau of Reclamation (Reclamation) Department of the Interior, represented by the Regional Director, Lower Colorado Region or a duly appointed successor; and the entities specified in Attachment 10.IA, that have a fully executed Boulder Canyon Project (BCP) Electric Service Contract with Western. Such entities may be referred to individually as Party or collectively as Parties.
2. **EXPLANATORY RECITALS:** This Restated Agreement is made with reference to the following facts:
 - 2.1. Pursuant to the Hoover Power Plant Act of 1984, Western entered into a Boulder Canyon Project Electric Service Contract with each Schedule A and Schedule B Contractor for the sale of contingent capacity and associated firm energy from the Hoover Powerplant for the period June 1, 1987 through September 30, 2017, with Reclamation a concurring signatory to each BCP Electric Service Contract insofar as its responsibilities were involved.
 - 2.2. Pursuant to the Hoover Power Allocation Act of 2011, Western is entering into a BCP Electric Service Contract (Contract) with each Contractor for the sale of contingent capacity and associated firm energy from the Hoover Powerplant for the period October 1, 2017 through September 30, 2067, with Reclamation a concurring signatory to each Contract insofar as its responsibilities are involved.

- 2.3. Reclamation and Western recognize each agency has responsibilities to ensure the BCP's plans, programs, budget, operation, maintenance, and replacements are managed in an efficient manner. The power output of the Hoover Powerplant will be delivered to the Contractors at the lowest possible cost consistent with applicable laws, statutes, regulations, and sound business principles.
- 2.4. Reclamation has the responsibility and authority for establishing the overall budget and the revenue requirement for the BCP. Reclamation is also responsible for the operation, maintenance, and replacements (OM&R) of the Hoover Dam Facilities. Western has the responsibility and authority for the OM&R of the Federal transmission system, including the delivery point(s) at Mead Substation. Western is also responsible for the administration of the Contracts and for the sale of contingent capacity and associated firm energy from the Hoover Powerplant.
- 2.5. The Parties have previously established Committees for the exchange of information and viewpoints regarding Contract administration, including the Hoover Dam Facilities' OM&R in accordance with applicable practices, standards, and regulatory requirements, and the Parties agree to extend and modify the Committees as set forth in this Restated Agreement.
- 2.6. In March 2014, the contractors of the BCP Implementation Agreement that was effective as of February 17, 1995 (Agreement) paid the outstanding principal balance for the Visitors Center and Air Slot loans due to the United States Treasury.
- 2.7. The applicable resolutions approved by the Engineering & Operating Committee and documented under the Agreement have been incorporated into the Contract or this Restated Agreement.
- 2.8. The Agreement was developed in conjunction with the BCP Electric Service Contracts in effect from June 1, 1987 through September 30, 2017. The Parties desire to enter into this Restated Agreement pursuant to the Hoover Power

Allocation Act of 2011, the Conformed Criteria, and the Contracts as defined in section 5.14 herein.

3. **AGREEMENT AMENDED AND RESTATED:** Now therefore, in consideration of the above recitals, the mutual covenants, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree this Restated Agreement amends and restates the Agreement dated February 17, 1995, in its entirety.

4. **TERM OF RESTATED AGREEMENT:**

- 4.1. This Restated Agreement shall become effective on October 1, 2016, and shall remain in effect until replaced by a successor agreement among the Parties, or with respect to an individual Contractor until termination of any BCP electric service agreement with that Contractor. The financial obligations incurred under this Restated Agreement, including but not limited to sections 12, 13, and 20 herein, shall remain enforceable until all such obligations hereunder have been performed in full.
- 4.2. If a Contractor's Allocation is reallocated in accordance with section 16 of the Contract, the Contractor will no longer be a Party to this Restated Agreement as of the effective date of the reallocation provided in written notice from Western to Reclamation and the Contractors. The Contractor shall have no further payment obligations after the effective date of the reallocation except for outstanding Contract and/or Restated Agreement payment obligations incurred prior to the reallocation. If the Contractor receiving the reallocation is not an existing Contractor, the new Contractor shall execute this Restated Agreement not later than the effective date of the reallocation.
- 4.3. If a Contractor's Contract is terminated in accordance with section 17 of the Contract, the Contractor will no longer be a Party to this Restated Agreement as of the effective date of the termination provided by written notice from Western to

Reclamation and the Contractors.

5. **DEFINITIONS:** The following terms, when used herein and in the Attachments as attached and future exhibit(s), if any, shall have the meanings specified:

- 5.1. **Annual Revenue Requirement:** The estimated BCP expenses for the Rate Year less any carryover of funds from prior Fiscal Year(s) and revenues from other sources as provided under subsection 7.4 of the Contract.
- 5.2. **Area Manager:** The Area Manager, Lower Colorado Dams Office, Reclamation.
- 5.3. **Base Charge:** The total charge paid by the Contractors for their allocated contingent capacity and firm energy based on the Annual Revenue Requirement, in accordance with section 7 of the Contract. The Base Charge shall be composed of a capacity component and an energy component.
- 5.4. **Boulder Canyon Project (BCP):** All works and the real property associated with such works authorized by the Boulder Canyon Project Act, as amended, the Hoover Power Plant Act of 1984, as amended, and any future additions authorized by Congress, to be constructed and owned by the United States, but exclusive of the main canal and its related appurtenances authorized by the Boulder Canyon Project Act, known as the All-American Canal.
- 5.5. **Boulder Canyon Project Act:** The Act of Congress approved December 21, 1928 (45 Stat. 1057, 43 U.S.C. 617), as amended and supplemented.
- 5.6. **Boulder Canyon Project Adjustment Act:** The Act of Congress approved July 19, 1940 (54 Stat. 774, 43 U.S.C. 618), as amended and supplemented.
- 5.7. **Boulder Canyon Project Ten Year Operating Plan (BCP Ten Year Operating Plan):** The written product of the annual budget planning process for the on-going operation of the BCP, developed by Reclamation in consultation with Western and the Contractors. A preliminary and final plan will be developed each year. The final plan will include, but is not limited to, information regarding proposed budget

and revenues, staffing projections, hydrology and generation projections, and historic data.

- 5.8. Change in Law: Any of the following events occurring after the execution date of the Contract: (a) a material change in or repeal of any applicable act, statute or regulation or (b) an enactment or making of a new applicable act, statute or regulation.
- 5.9. Colorado River Dam Fund (Dam Fund): The special fund in the United States Treasury established by Section 2(a) of the Boulder Canyon Project Act and available for carrying out the provisions of said Act, the Boulder Canyon Project Adjustment Act, the Hoover Power Plant Act of 1984, the Hoover Dam Miscellaneous Sales Act, and the Hoover Power Allocation Act of 2011.
- 5.10. Committees: The Coordinating Committee, the Engineering & Operating Committee, and the Technical Review Committee.
- 5.11. Conformed Criteria: The Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects, published in Federal Register Notice 49 FR 50582, dated December 28, 1984, as amended by Federal Register Notice 77 FR 35671, dated June 14, 2012.
- 5.12. Contractor(s): The parties specified in Attachment No. 4 of the Contract that have a fully executed Contract with Western for BCP electric service.
- 5.13. Contractor's Allocation: The Contractor's contingent capacity and firm energy provided for under the Contract as set forth in Exhibit A of the Contract and inclusive of excess energy that may be available to the Contractor.
- 5.14. Contract(s): Each and all of the Boulder Canyon Project Electric Service Contracts between each Contractor and Western, with the concurrence of Reclamation, effective from October 1, 2016 through September 30, 2067, with an initial service date of October 1, 2017.

- 5.15. Coordinating Committee: The Coordinating Committee established pursuant to section 8 herein.
- 5.16. Coordinating Committee Chairperson: Reclamation's Representative on the Coordinating Committee authorized to chair the Coordinating Committee.
- 5.17. Engineering and Operating Committee (E&OC): The Engineering and Operating Committee established pursuant to section 8 herein.
- 5.18. E&OC Chairperson: Reclamation's Representative on the E&OC authorized to chair the E&OC.
- 5.19. Energy Deemed Delivered: The amount of energy scheduled, metered, and determined to be delivered to each Contractor, including Motoring Losses (ML) and Unloaded Synchronized Generation Losses (SL) as defined in Exhibit D to the Contract, all determined in accordance with the Metering and Scheduling Instructions (MSI) developed and agreed upon in accordance with subsection 6.12.2 of the Contract. Such energy amount shall exclude energy purchased by Western, at the request of a Contractor, in accordance with subsection 6.9.4 of the Contract.
- 5.20. Federally Recognized Indian Tribe(s): A Native American Indian tribe that is eligible to contract with Western for an allocation of Schedule D contingent capacity and firm energy.
- 5.21. Fiscal Year: The twelve (12) month period so designated by Federal law. Until changed by Federal law, Fiscal Year means the period commencing October 1 of each year, immediately after midnight of September 30, and ending at midnight of September 30 of the following year.
- 5.22. Hoover Dam Facilities: The dam and incidental works constructed by the Secretary of the Interior pursuant to the authority granted in Section 1 of the Boulder Canyon Project Act and the Hoover Power Plant Act of 1984, including all associated facilities, but not limited to the dam, support buildings, power houses, station

service system, central section, intake towers, penstocks, spillways, tunnels, and Visitor Facilities.

- 5.23. Hoover Dam Miscellaneous Sales Act: The Act of Congress approved November 7, 2000 (114 Stat. 1989, 43 U.S.C. 619), as amended and supplemented.
- 5.24. Hoover Power Allocation Act of 2011: The Act of Congress approved December 20, 2011 (125 Stat. 777, 43 U.S.C. 619a) that amends the Hoover Power Plant Act of 1984, for certain statutory schedules governing contracts for delivery commencing October 1, 2017, of hydroelectric power generated at the Hoover Powerplant to the BCP marketing area within Arizona, California, and Nevada.
- 5.25. Hoover Power Plant Act of 1984: The Act of Congress approved August 17, 1984 (98 Stat. 1333, 43 U.S.C. 619) and amended by the Hoover Power Allocation Act of 2011.
- 5.26. Hoover Powerplant: The power houses included in the Hoover Dam Facilities, consisting of the existing seventeen (17) main generating units and their associated equipment used to produce the power and ancillary services related to the Contractors' contingent capacity and firm energy, as may be improved, replaced, renovated, or expanded during the term of the Contract.
- 5.27. Lower Colorado River Multi-Species Conservation Program (MSCP): As defined in Section 9401 of the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 123 Stat. 1327).
- 5.28. Power Repayment Study (PRS): The Power Repayment Study used by Western to calculate the Base Charge and capacity and energy rates for the BCP.
- 5.29. Rate Year: The Fiscal Year for which the Annual Revenue Requirement is forecast for annual rate determination purposes in the PRS.
- 5.30. Readvances: Available funds appropriated by the Secretary of the Treasury to the Dam Fund for replacements related to the BCP pursuant to the Boulder Canyon

Project Act and the Boulder Canyon Project Adjustment Act. These funds are only readvanced to the Dam fund if requested by the Secretary of the Interior.

- 5.31. Regional Director: The Regional Director, Lower Colorado Region, Reclamation.
- 5.32. Repayable Capital Investments: The calculation that shows the difference between the amount funded by the Contractors and the amount that would have been paid by the Contractors if replacements were funded by Readvances and amortized for fifty (50) years. The term Repayable Capital Investments has the same meaning and replaces the defined term Repayable Advances as used in the Contract, and the term repayable advances as used in the Hoover Power Allocation Act of 2011 and the Conformed Criteria.
- 5.33. Replacement Capital Investment: Ninety-six (96) percent of the total amount expensed for multi-year and annual replacements. Multi-year replacements include interest during construction. The Replacement Capital Investment is amortized for fifty (50) years, as if Readvances were appropriated for the replacements. Replacement Capital Investment is used to calculate the Repayable Capital Investment. The Replacement Capital Investment is documented in the Fiscal Year following the year the replacements have been placed in service.
- 5.34. Representative(s): The primary or alternate Committee representative(s) designated by a Contractor pursuant to subsection 7.3 herein.
- 5.35. Restated Agreement: This Amended and Restated Boulder Canyon Project Implementation Agreement No. 95-PAO-10616 (Western) and No. 5-CU-30-P1128 (Reclamation), including all Attachments and future exhibit(s), if any.
- 5.36. Schedule A Contractor: An entity listed in Attachment No. 4 of the Contract that has entered into a Contract with Western in accordance with Section 105 (a) (1) (A) of the Hoover Power Plant Act of 1984, as amended by the Hoover Power Allocation Act of 2011, and the Conformed Criteria.

- 5.37. Schedule B Contractor: An entity listed in Attachment No. 4 of the Contract that has entered into a Contract with Western in accordance with Section 105 (a) (1) (B) of the Hoover Power Plant Act of 1984, as amended by the Hoover Power Allocation Act of 2011, and the Conformed Criteria.
- 5.38. Schedule D Contractor: An entity listed in Attachment No. 4 of the Contract that has entered into a Contract with Western in accordance with Section 2(d) of the Hoover Power Allocation Act of 2011 and the Conformed Criteria.
- 5.39. Technical Review Committee (TRC): A subcommittee of the E&OC established pursuant to section 8 herein.
- 5.40. Transitional Items: Financial obligations of the BCP funded by the Schedule A and Schedule B Contractors prior to October 1, 2017, which have not been expensed as of that date. Transitional Items also include sequestered funds as described in section 16 herein, which are unavailable to spend as of October 1, 2017.
- 5.41. Treasury: The United States Treasury.
- 5.42. Tribal Contractor(s): Any Contractor that is a Federally Recognized Indian Tribe, or an entity, enterprise, or authority of a Federally Recognized Indian Tribe(s) that is formed by such a tribe(s) to lawfully use the Contractor's Allocation.
- 5.43. Visitor Facilities: The facilities at the BCP that contribute to the safety, education, and quality of recreation and tourism opportunities for Hoover Dam visitors. The facilities include, but are not limited to, the historic exhibit building, the multi-story parking structure, tour galleries, visitor center, exhibits, Spillway building, and viewing platform at the Hoover Dam Facilities.
- 5.44. Visitor Related Revenues: Revenues collected by Reclamation from fees established by Reclamation for public use of the Visitor Facilities including, but not limited to, fees for parking, entrance, tours and exhibits, and other visitor related revenues including, but not limited to sales of photographs and memorabilia.

5.45. Working Capital: Funds advanced by the Contractors to meet BCP cash flow needs. Such funds will be adjusted, if needed, through the Annual Revenue Requirement in accordance with section 15 and Attachment 3.IA herein.

6. **RELATIONSHIP TO THE CONTRACTS**: The Contracts and this Restated Agreement shall be interpreted and implemented together. In the event of any conflict or inconsistency between the Contracts and this Restated Agreement, the Contracts shall control.

7. **COMMITTEES**:

7.1. Reclamation, Western, and the Contractors have formed the Coordinating Committee, the E&OC, and the TRC (Committees) to facilitate the exchange of information in a manner that promotes enhanced collaboration, communication, and transparency in order to seek consensus among the Parties regarding funding and management of the BCP.

7.2. The Committees will share information and provide an avenue for Contractor input so that capacity and energy charges for the BCP shall be at the lowest possible cost consistent with applicable laws, statutes, regulations, and sound business principles.

7.3. The Parties shall appoint a Representative(s) for the Committees by the effective date of the Restated Agreement. The Representatives are referenced in Attachment 1.IA, and will be reviewed annually by the Parties to this Restated Agreement. The designated Representatives shall be authorized to make decisions and commitments with regard to the issues being considered by the Committees. Changes to a designated Representative shall be communicated to the Chairperson of the appropriate Committee in writing at least fifteen (15) business days prior to the next committee meeting. Any person who is not a Representative will not act as a Representative. A minimum of five (5) business days advance notice to the Chairperson is requested for all guest attendance. Reclamation's Representative for each committee shall be the Chairperson.

- 7.4. Representatives may participate in Committee meetings either in person or remotely, using available electronic methods. A Committee Representative may represent and act for one (1) or more non-participating Contractor(s), provided that the non-participating Contractor(s) provides prior written notice of such representation to the Committee Chairperson at least five (5) business days prior to the meeting in which the Contractor is unable to participate.
- 7.5. The Chairperson shall provide an agenda for all Committee meetings to each Committee Representative at least ten (10) business days prior to the scheduled meeting date. Each meeting notice shall include an agenda and a list of all action items to be addressed, including any proposed resolutions. Meeting locations shall be designated by the Chairperson.
- 7.6. Minutes for the Coordinating Committee and the E&OC shall be prepared by Reclamation and copies thereof shall be transmitted to each Committee Representative within twenty (20) business days, and Reclamation shall allow at least five (5) business days between transmittal of the minutes and the Area Manager making a decision under section 9 herein. Minutes shall be finalized at the following meeting. A report for the TRC shall be prepared by the Contractor Representatives of the TRC and copies thereof shall be transmitted to the E&OC Representatives.
- 7.7. Nothing in this section 7 shall limit the United States or Federally Recognized Indian Tribes and Tribal Contractors which are signatories to this Restated Agreement from conducting government-to-government consultations and communications at any time, as stated in section 27 herein.
8. **ROLES AND RESPONSIBILITIES OF THE COORDINATING COMMITTEE, ENGINEERING & OPERATING COMMITTEE, AND TECHNICAL REVIEW COMMITTEE:**

- 8.1. Coordinating Committee: The Coordinating Committee shall consist of persons from each of the Parties designated to act as Representatives.
- 8.1.1. General Functions: The function of the Coordinating Committee is to resolve issues, disputes, or disagreements arising from the actions of the E&OC, TRC, or any other subcommittee.
- 8.1.2. Formal Decision-Making Process: In the event consensus is not achieved, the Coordinating Committee Representatives may participate in the formal decision-making process as provided in section 9 of this Restated Agreement.
- 8.1.3. Meetings: The Coordinating Committee shall meet at the call of the Coordinating Committee Chairperson or upon the written request of two (2) or more Coordinating Committee Representatives.
- 8.2. Engineering & Operating Committee: The E&OC is a subcommittee of the Coordinating Committee. The E&OC is intended to consist of program managers.
- 8.2.1. General Functions: The function of the E&OC is to share information and communicate the BCP's budget, projects, and OM&R status, provide an avenue for Contractor input, and facilitate implementation of the Contracts and this Restated Agreement.
- 8.2.1.1. The E&OC may establish subcommittees to address specific issue(s) and report back to the E&OC.
- 8.2.1.2. The E&OC shall perform such other functions as directed by the Chairperson or Coordinating Committee.
- 8.2.2. Formal Decision-Making Process: In the event consensus is not achieved, the E&OC Representatives may participate in the formal decision-making process as provided in Section 9 of this Restated Agreement.

- 8.2.3. Meetings: The E&OC shall meet at least three (3) times a year, unless otherwise agreed to by the E&OC Representatives, with prior notice provided by the E&OC Chairperson to the E&OC Representatives. The E&OC Chairperson may schedule additional E&OC meetings as necessary. If an issue occurs outside of an E&OC meeting, a special meeting may be requested to address the issue.
- 8.2.3.1. Agenda items for the next E&OC meeting shall be submitted to the Chairperson at least fifteen (15) business days prior to the meeting by any E&OC Representative. Reclamation and Western shall use their best efforts to present supporting documents and studies.
- 8.2.3.2. The E&OC may consider, discuss, and comment upon all matters presented to it. A Contractor's Representative may present issues, comments, or concerns in writing to the E&OC Chairperson at any time for inclusion on the agenda for the next E&OC meeting. The E&OC Chairperson may also present matters to the E&OC on behalf of Reclamation or Western, including proposed actions or recommendations.
- 8.2.3.3. The E&OC may appoint subcommittees to consider any matter before the E&OC and to make recommendations to the E&OC.
- 8.2.4. Outages: Reclamation shall provide the Hoover Dam 17-Month Operating Schedule on a monthly basis to the Representatives of the E&OC.
- 8.2.5. Resolutions: When clarification or implementing provisions of the Restated Agreement are necessary, the E&OC Representatives or a subcommittee may draft resolutions, and such resolutions shall become effective when approved by the E&OC Representatives.

- 8.3. Technical Review Committee: The TRC is a subcommittee of the E&OC. The TRC is intended to consist of persons with engineering, operating, or other technical capabilities.
- 8.3.1. General Functions: The function of the TRC is to review, discuss, and make recommendations regarding the BCP Ten Year Operating Plan.
- 8.3.2. Meetings: The TRC shall meet annually in September, unless otherwise agreed to by the TRC Representatives with prior notice provided by the E&OC Chairperson to the TRC Representatives. The main purpose of the annual meeting is to present the background for, and answer questions relating to, the preliminary BCP Ten Year Operating Plan.
- 8.3.2.1. Following the annual TRC meeting, the Contractor Representatives of the TRC shall review and prepare a report of recommendations for the E&OC on the preliminary BCP Ten Year Operating Plan.
- 8.4. General Provisions Applicable to all Committees:
- 8.4.1. The recommendations of the Committees shall not limit or impair any Party's rights or obligations as provided by their respective Contracts, or as provided by applicable laws, statutes, or regulations.
- 8.4.2. Reclamation or Western shall forward issues or concerns raised by Contractors which are outside the scope of this Restated Agreement or the Contracts to the appropriate authorities.
- 8.4.3. Nothing in this section 8 shall authorize any of the Committees to amend or modify this Restated Agreement or the Contracts.
- 8.4.4. Nothing in this section 8 is intended to restrict, modify, or waive any provision of section 20 of the Contracts (Disputes).
- 8.4.5. Nothing in this section 8 shall limit the United States or Federally Recognized Indian Tribes and Tribal Contractors which are signatories to

this Restated Agreement from conducting government-to-government consultations and communications at any time, as stated in section 27 herein.

8.5. Ten-Year Planning Process:

8.5.1. Reclamation and Western, in coordination with the E&OC and the TRC, shall conduct an annual planning process to provide to the Contractors:

- a) information, including but not limited to plans for the on-going operation, safety, and security of the BCP;
- b) information regarding plans for the integrated operation with the Parker-Davis Project and the financial impact of such integration on the Hoover Dam Facilities;
- c) the opportunity to submit input into the OM&R of the Hoover Powerplant prior to the expenditures of significant funds;
- d) assurance that the Hoover Dam Facilities are being operated as efficiently and effectively as possible; and
- e) a mechanism to link the budget, Annual Revenue Requirement, Base Charge, and rate and ten-year planning processes.

8.5.2. The product of the annual planning process will be a preliminary and final BCP Ten Year Operating Plan. The Parties intend that the annual planning process be completed in advance of the budget finalization, Annual Revenue Requirement and Base Charge development, and rate making process so that the E&OC and the TRC will have the ability to constructively comment during the preparation of the BCP Ten Year Operating Plan.

8.5.3. Reclamation and Western shall take into consideration the budget, hydrology, and generation contained in the most current final BCP Ten Year Operating Plan during the development of all budgetary documents, Annual

Revenue Requirement and Base Charges, and rate analysis prepared by Western or Reclamation.

8.5.4. Attachment 9.IA shall serve as the guideline for the BCP Ten Year Operating Plan. The form of the BCP Ten Year Operating Plan may be modified and adjusted by Reclamation and Western in coordination with the E&OC.

8.5.5. Western and Reclamation shall utilize the most current information available in developing the PRS. Each year, in conjunction with the ten-year planning process, Reclamation will determine the total costs to be recovered in the upcoming year and submit those costs to Western for inclusion in the PRS for purposes of calculating the Base Charge. The data developed in accordance with the ten-year planning process shall be used in the PRS, unless prior to the distribution of the PRS to the Contractors more current data is communicated to and reviewed with the Contractors.

8.6. Annual Revenue Requirement Analysis: Each year, Western and Reclamation shall present the analysis of the Annual Revenue Requirement and proposed Base Charges.

8.7. Early Participation: From October 1, 2016, through September 30, 2017, the Schedule D Contractors' participation in Committees is limited to business related to Fiscal Year 2018 and beyond.

9. **FORMAL DECISION-MAKING PROCESS**: The formal decision-making process will be used when consensus is not achieved related to any matter that has been or may be submitted to the E&OC for consideration as provided in subsection 8.2.3.2 herein. Proposed decisions by the Area Manager relating to contingency planning under section 10 herein are subject to the formal decision-making process described in this section 9.

9.1. The formal decision-making process begins with the E&OC. The formal decision-making process will typically be concluded within seventy-five (75) days. The following steps will be used during the formal decision-making process:

9.1.1. E&OC: When the Area Manager proposes to make a decision taking action on a matter that is subject to this section 9, the matter will be included on the agenda of the next E&OC meeting. During the E&OC meeting, Reclamation and Western will solicit discussion and comments concerning proposed action(s) on the matter from those E&OC Representatives who participate in the E&OC meeting either in person or remotely, using available electronic methods. An E&OC Representative may represent and act for one (1) or more non-participating Contractor(s), provided that the non-participating Contractor(s) provides prior written notice of such representation to the E&OC Chairperson at least five (5) business days prior to the meeting in which the Contractor is unable to participate. The E&OC will exercise all reasonable efforts to unanimously agree on actions proposed by Reclamation or Western during an E&OC meeting. If objections are raised at the E&OC meeting, the E&OC Chairperson or any participating E&OC Representative may call for each Representative to state their position on Reclamation's or Western's proposed action(s). Those E&OC Representatives participating in the meeting, or a designated Representative who has been appointed by written notice to the E&OC Chairperson, will state their position(s). The E&OC Chairperson or his/her designee will document the position for each Representative as advisory information to show which E&OC Representatives support or oppose the proposed action(s). Once the position of each participating Representative has been documented, any Representative may verbally request, during the

meeting, a written decision from the Area Manager concerning the proposed action(s). Additionally, any Representative who participated in the E&OC meeting, or Contractor who was represented at the meeting, may request a written decision from the Area Manager by submitting a written request to the Area Manager with a copy to all of the E&OC Representatives. If no request for a written decision is requested, no further action is required. If there are no objections, Reclamation and Western shall be deemed to have the support of the E&OC to pursue the proposed action(s).

9.1.2. Area Manager's Written Decision: If a written decision is requested during or after the E&OC meeting, within ten (10) business days of receipt of the request, the Area Manager, in concurrence with Western as appropriate, will issue a written decision to the E&OC Representatives after considering the position of each E&OC Representative, as documented in the minutes of the applicable meeting, and additional information provided by interested Contractors.

9.1.3. Coordinating Committee: The Representatives of two (2) or more of the Contractors may request that the Area Manager's decision be reviewed by the Coordinating Committee. Such a request shall be made in writing to the Coordinating Committee Chairperson and the Area Manager with a copy to the E&OC and Coordinating Committee Representatives, within five (5) business days of the date of the receipt of the Area Manager's decision. The Coordinating Committee Chairperson shall establish a date for the Coordinating Committee to meet within fifteen (15) business days after the Coordinating Committee Chairperson's receipt of the required notice. A written request to convene the Coordinating Committee shall include an

explanation of the basis for opposing the Area Manager's decision, and offer a proposal for advancing an alternate position.

9.1.3.1. Either or both Reclamation and Western will present the rationale supporting the Area Manager's decision and solicit comment from those Coordinating Committee Representatives, who participate either in person or remotely, using available electronic methods. A Coordinating Committee Representative may represent and act for one (1) or more non-participating Contractor(s) provided that the non-participating Contractor(s) provides written notification of such representation to the Coordinating Committee Chairperson at least five (5) business days prior to the meeting in which the Contractor is unable to participate. The Representatives will have an opportunity to express their support or opposition to the Area Manager's decision or present an alternate position. The Coordinating Committee will consider all positions and exercise reasonable efforts to unanimously agree on actions to be taken. The Coordinating Committee Chairperson or any participating Representative may call for each Representative to state their position on the proposed action(s) sustained by the Area Manager's decision or any alternate position presented by a participating Representative. Those Coordinating Committee Representatives participating in the meeting, or a designated Representative who has been appointed by written notice to the Coordinating Committee Chairperson, will state their position(s). The Coordinating Committee Chairperson or his/her designee will document the position for each Representative as advisory information to show

which Coordinating Committee Representatives support or oppose the original proposed action(s) sustained by the Area Manager's decision or an alternate position(s) presented by Coordinating Committee Representatives. Once the position of each participating Representative has been documented, any Representative may verbally request a written decision from the Reclamation Deputy Regional Director, Lower Colorado Region (Deputy RD).

Additionally, any Representative who participated in the Coordinating Committee meeting, or any Contractor who was represented at the meeting, may request a written decision from the Deputy RD by submitting a written request to the Deputy RD with a copy to all of the Coordinating Committee Representatives. If no request for a written decision is requested, no further action is required. If there are no objections, Reclamation and Western shall be deemed to have the support of the Coordinating Committee to pursue the proposed action(s).

9.1.4. Deputy RD's Written Decision: If a written decision is requested during or after the Coordinating Committee meeting, within ten (10) business days of receipt of the request the Deputy RD, in concurrence with Western as appropriate, will issue a written decision to the E&OC and Coordinating Committee Representatives after considering the position for each of the E&OC and Coordinating Committee Representatives, as documented in the minutes of the applicable meetings. The Deputy RD shall consider:

- a) the Representatives' written requests for additional review;
- b) the position of each E&OC and Coordinating Committee Representative as documented in the minutes of the applicable

meetings and additional information provided by interested
Contractors;

c) the Area Manager's decision; and

d) applicable laws, statutes, regulations, and sound business principles.

9.1.5. Regional Director's Involvement: Two (2) or more Representatives who participated at the applicable Coordinating Committee meeting or Contractor(s) who were represented at the meeting may submit a written request for the Regional Director to review the decision of the Deputy RD. Such notice requesting the Deputy RD's issued decision be reviewed shall be submitted to the Regional Director, the Deputy RD, and the Coordinating Committee Representatives, within five (5) business days of receipt of the Deputy RD's decision. The Representatives' written request for the Regional Director's review shall include an explanation of the basis for opposing the Deputy RD's decision, and offer a proposal for advancing an alternate position. The Regional Director, in concurrence with Western as appropriate, shall consider:

a) the Representatives' written requests for additional review;

b) the position of each Representative as documented in the minutes of the applicable meetings and additional information provided by interested Contractors;

c) the Area Manager's and Deputy RD's decision; and

d) applicable laws, statutes, regulations, and sound business principles.

9.1.6. Regional Director's Written Decision: The Regional Director will issue a written decision to all the Committee Representatives within twenty (20) business days of the required notice. The decision rendered by the Regional

Director shall only be reviewed, modified or overturned subject to the provisions identified in section 25 (Disputes) of this Restated Agreement.

9.1.7. No Early Action During Formal Decision-Making Process: Although nothing in this formal decision-making process shall prohibit Reclamation from continuing operations of the Hoover Dam Facilities, whenever possible Reclamation or Western will not proceed with an action(s) under review until a final decision to proceed, as proposed, is rendered pursuant to the formal decision-making process detailed in this section 9. Except as provided below, any action(s) subject to the formal decision-making process under this section 9 may not be submitted for dispute under section 25 of this Restated Agreement until the Regional Director has issued a written decision in accordance with subsection 9.1.6 herein. In the event that a decision is not rendered by the Area Manager or Deputy RD within the timeframes established in this section 9, any Contractor may elevate a proposed action for additional review by the next higher decision-making official identified in this section 9. In the event the Regional Director does not issue a decision within the timeframe established in subsection 9.1.6 herein, any Contractor may elect to submit the matter for dispute under section 25 herein.

9.2. Emergency Decisions: The formal decision-making process does not apply to actions that are required in response to emergency conditions which may adversely affect public safety, public health, property, or the operation of the BCP, as determined by the Area Manager.

9.3. Nothing in this section 9 shall limit the United States or Federally Recognized Indian Tribes and Tribal Contractors which are signatories to this Restated

Agreement from conducting government-to-government consultations and communications at any time, as stated in section 27 herein.

10. **CONTINGENCY PLANNING:**

10.1. In an effort to address potential events that may have an adverse effect on the BCP, the Parties agree to engage in contingency planning if any of the following occurs:

10.1.1. Capacity Loss Below 1000 MW: Hoover Dam 17-Month Operating

Schedule reveals one (1) of the following capacity levels will be sustained:

- a) Level 1 - Below 1000 MW for > 45 days;
- b) Level 2 - Below 850 MW for > 30 days;
- c) Level 3 - Below 700 MW for > 1 day.

10.1.2. Force Majeure: The operation of the Hoover Dam Facilities is significantly compromised by an act of God or of a public enemy, a major catastrophe, drought, or any other unforeseen and unavoidable cause, or an “uncontrollable force,” as defined in Provision 34 of the Western Area Power Administration General Power Contract Provisions, which are made part of the Contract and are attached thereto as Exhibit E.

10.2. As a result of the above events, additional meetings may be requested by any E&OC Representative or TRC Representative, as provided in subsection 8.2.3 of this Restated Agreement. The purpose of a meeting called under this subsection shall be for the Parties to meet, confer, and recommend appropriate action by any or all Parties, in connection with the operation of the Hoover Dam Facilities, which may include:

- a) Identifying the full range of cost containment opportunities to mitigate adverse financial impacts to the Contractors due to loss of generation;
- b) Reviewing available hydrology data;

- c) Evaluating the ability of Reclamation to seek alternate statutorily authorized funding sources; and/or
- d) Evaluating other operational or adverse impacts to the BCP.

11. **FUTURE ELECTRIC POWER DEVELOPMENT RELATED TO HOOVER DAM FACILITIES:**

11.1. **New Hydropower:** Pursuant to the Boulder Canyon Project Act, Reclamation reserves the right to pursue all proposed hydropower developments at the Hoover Dam Facilities, unless such proposed hydropower developments would adversely impact the BCP. Reclamation and Western will meet and confer with any or all Contractor(s) to discuss the proposed hydropower development. Reclamation and Western will consider hydropower development proposals that involve the financial participation by all or some of the Contractors, provided that participation by fewer than all of the Contractors does not adversely impact the non-participating Contractors and provided that the proposal can be implemented as determined by Reclamation and Western. The parameters of any proposed hydropower development will be determined by written agreement, and considered part of the Hoover Dam Facilities.

11.2. **New Non-Hydropower:** Proposals for non-hydropower development at the Hoover Dam Facilities and appurtenant lands will be governed by applicable laws at the time such development proposals are made. Reclamation and Western will meet and confer with the Contractors to discuss any proposed non-hydropower development. Reclamation must determine that the non-hydropower development proposal is compatible with and does not adversely impact BCP purposes before it can proceed.

12. **BILLING AND PAYMENT:** Western shall bill and collect for all amounts in accordance with the Contracts, except for the amounts billed by Reclamation. Reclamation shall bill

and collect, in accordance with this Restated Agreement, for MSCP payments, Transitional Items, and Repayable Capital Investments, as provided in sections 13, 16, and 20 herein. Failure by a Contractor to submit payment on a timely basis will result in accrual of charges for interest, penalties, and administrative costs as provided by applicable law.

13. **LOWER COLORADO RIVER MULTI-SPECIES CONSERVATION PROGRAM:**

Reclamation will issue bills for collection on a quarterly schedule to the Schedule D Contractors in California and the Tribal Contractors in Arizona and Nevada, for their proportionate shares of the MSCP funding schedule based on the MSCP cost share of the non-federal MSCP funding specified in Attachment 2.IA attached hereto. The bills will be sent out approximately thirty (30) days before the start of a Fiscal Year quarter, and are due on or before the first business day of the Fiscal Year quarter. The billing will begin in Fiscal Year 2018 with the first bill issued on September 1, 2017, due on October 1, 2017. After timely payment of the amount due, the Schedule D Contractor's MSCP payment obligation under section 11 of the Contract will be satisfied.

The amounts billed to Schedule D Contractors in California and the Tribal Contractors in Arizona and Nevada in accordance with this section shall be credited quarterly toward the respective MSCP cost share funding obligations of the California Permittees, Arizona Permittees, and Nevada Permittees as specified in section 8 of the Lower Colorado River Multi-Species Conservation Program Funding and Management Agreement dated April 4, 2005. Payment of amounts billed to Schedule D Contractors in California and the Tribal Contractors in Arizona and Nevada in accordance with this section shall not be deemed an obligation of any other Contractors or Permittees, either jointly or individually.

14. **TREASURY PAYMENTS:** The Annual Revenue Requirement includes principal and interest currently due to the Treasury. When sufficient funds are available to meet the requirements of the BCP in accordance with the Contracts, Reclamation will pay principal on a monthly basis, or in the early part of the Fiscal Year as a lump sum, rather than at the

end of the year; provided, however, the annual principal payments over the term of the Contracts shall not exceed the cumulative principal payments that would be made under a level amortization schedule. Reclamation shall report the timing and amount of principal payments paid in the prior Fiscal Year at the first E&OC meeting of each Fiscal Year.

15. **WORKING CAPITAL:**

15.1. The Working Capital advanced by the Contractors shall be used only to: bridge the time delay between the date of billing by Western for the Base Charge and the date of receipt by Reclamation of the resulting revenues; and assure that sufficient funds are available during each Fiscal Year to avoid deferral for work necessary to maintain the safe operation of the BCP and to meet required obligations. The Working Capital is available only to cover expenditures for those BCP uses included in the authorized budget of Reclamation or Western.

15.2. Working Capital calculations shall be based on the formula included in Attachment 3.IA. Reclamation will prepare a Projected Dam Fund Balance, as described in Attachment 3.IA, by February 1 of each year.

15.3. Initial Working Capital: The initial Working Capital required shall be calculated based on the lowest balance of the Projected Dam Fund balance and shall be included in the Annual Revenue Requirement.

15.3.1. Working Capital and unapplied carryover amounts due to Schedule A and Schedule B Contractors from the contract ending September 30, 2017, will be refunded or credited against monthly energy and capacity bills as available in Fiscal Year 2018.

15.4. Annual Working Capital: The first Working Capital adjustment will occur in Fiscal Year 2018 to be available in Fiscal Year 2019 and thereafter the Working Capital may need to be adjusted based on the Projected Dam Fund Balance. Reclamation

and Western will work with the E&OC to determine the adjustment amount and timing. Adjustments will be included in the Annual Revenue Requirement.

15.5. FY 2068: The Working Capital balance shall be returned to the Contractors in Fiscal Year 2068 according to their proportionate shares. The proportionate shares will be calculated by dividing the Working Capital balance amount by two (2) and allocating to each Contractor based on each Contractor's percentage of contingent capacity and firm energy.

16. **TRANSITION OF FINANCIAL OBLIGATIONS**: Reclamation will bill Schedule D Contractors in California and the Tribal Contractors in Arizona and Nevada for their proportionate share of the financial obligations of the BCP funded by the Schedule A and Schedule B Contractors prior to October 1, 2017, for which benefits have not been received as of that date. Reclamation will bill the Arizona Power Authority (APA) and the Colorado River Commission of Nevada (CRC) for the proportionate shares of Transitional Items for the Schedule D non-tribal entities in Arizona and Nevada, which have contracted for BCP electric service with APA or CRC. The proportionate share to be billed shall be calculated by dividing the required total Transitional Item amount by two (2) and allocating to each Schedule D Contractor. Half of the Transitional Items billed will be allocated based on each Schedule D Contractor's percentage of contingent capacity, and the other half will be allocated based on the Schedule D Contractor's percentage of firm energy. The amounts billed under this section 16 will be returned prior to October 1, 2018, to the Schedule A and Schedule B Contractors in proportion to their shares of the BCP under the prior contract. Financial obligations include the following items:

- a) Undelivered orders as of September 30, 2017. Undelivered orders are obligated funds for undelivered work;

- b) Sequestered funds as of September 30, 2017. Sequestered funds are an unobligated cash balance set aside from the available funding based on Executive Order 13589 in response to the Budget Control Act of 2011;
- c) Multi-year project funding as of September 30, 2017. Multi-year project funding is unobligated funds collected in prior years for work not completed in the Fiscal Year budgeted, but needed in the following Fiscal Year to continue work.

16.1. FY 2068: Collection and reimbursement of transitional items, at the end of the Contract term, September 30, 2067, shall follow the procedure outlined in this section 16, substituting appropriate dates, and entities as necessary, subject to applicable laws, regulations, and policies.

17. **MULTI-PROJECT BENEFITS AND COSTS**: Western develops procedures for multi-project benefits and costs, which specify: the procedures to determine multi-project benefits and costs; calculation of the benefits and costs of integrated operation of the BCP with other federal projects; and allocation of such benefits and costs among other projects. Any reports, data, or analysis pertaining to BCP-related multi-projects benefits and costs provided to the contractors of other federal projects shall be made available to the E&OC Representatives for review prior to inclusion of the multi-project benefits and costs in any PRS. The Multi-Project Written Procedures are included as Attachment 4.IA.

18. **AUDITS**: The Parties desire to establish procedures for audits of the financial records for the BCP. Western and Reclamation shall make available any and all audit reports that are completed pursuant to this section 18. It is the intent of the Parties that audits provided for in this Restated Agreement must follow the procedures outlined in this section 18.

18.1. Conduct of Audits:

18.1.1. All recommendations from audits conducted pursuant to this Restated Agreement shall be evaluated and reviewed by the E&OC, and those recommendations with which the E&OC Representatives unanimously

agree shall be implemented by Western or Reclamation, as applicable. If a recommendation will not be fully implemented, Reclamation and Western agree to provide a written explanation to the E&OC for discussion, and such explanation shall specify the reasons for non-implementation. Any E&OC Representative may request a meeting, under the formal decision-making process pursuant to section 9 herein, to discuss any audit recommendation which Reclamation or Western does not plan to implement.

18.1.2. All audits shall be conducted in accordance with the generally accepted auditing standards and other established standards or guidelines.

18.1.3. Audit reports produced as a result of audits of the BCP shall be made available to and reviewed with Reclamation and Western before finalization. Reclamation and Western shall receive copies of the final audit report.

18.2. Periodic Audit:

18.2.1. The Contractors agree to have a periodic audit of the BCP performed by an independent auditor beginning Fiscal Year 2019 and every third year thereafter. This schedule may be modified by the E&OC. Audits scheduled for a period longer than three (3) years may not include all supporting documentation, as some records are retained for only three (3) years in accordance with federal document retention policies. The Parties shall mutually agree upon the specific date that periodic audits will commence.

18.2.2. The costs incurred to complete periodic audits and the administrative costs associated therewith shall be deemed an operation and maintenance expense for the BCP and shall be included in the BCP Ten Year Operating

Plan and the Annual Revenue Requirement. Each Contractor shall pay its proportionate share of the cost through the Annual Revenue Requirement.

18.2.3. The scope of the periodic audit is to review Reclamation's and Western's records to ensure the records are maintained in accordance with the Restated Agreement and the Contracts. The scope of the periodic audit may include cash balances, undelivered orders, carryover, repayable schedules, debt service, and allocated costs. The information for the periodic audit shall be limited to that available pursuant to section 28 of the Contracts.

18.2.4. Reclamation's Acquisitions and Assistance Management Division, Operations Branch in Denver, Colorado, or another Reclamation regional office, will solicit and award the contract for the periodic audit. The Reclamation contracting officer assigned with soliciting and awarding the contract for the periodic audit will appoint a Contracting Officer's Representative (COR) with the necessary audit expertise to function independently of Reclamation's Lower Colorado Region. The COR advises the Reclamation contracting officer with regard to all technical aspects of the contract requirements, including any technical issues that may arise during contract administration.

18.2.5. The Contractors may designate a small committee of representatives to participate in the contracting process in an advisory capacity. Such committee will review and comment on the written audit scope of work, the evaluation criteria, the independent cost estimate, and the proposals received from vendors. To ensure the final actual costs for the audit services are fair and reasonable, the Reclamation contracting officer will seek competing proposals for the contract for audit services from

participating qualified vendors. The Reclamation contracting officer will make the final determination for the contract selection.

18.2.6. Reclamation and Western will provide documents to the independent auditor in accordance with all applicable laws, regulations, and federal document retention policies.

18.3. Annual Chief Financial Officers Audits: Western and Reclamation are subject to an annual audit pursuant to the Chief Financial Officers Act of 1990 (Public Law 101-576). The audit is conducted according to generally accepted accounting principles and audit standards, reviews Reclamation's and Western's records to ensure they are maintained in compliance with applicable standards, laws, regulations, and procedures, and verifies that appropriate internal fiscal controls and procedures are in place. Such audits are authorized pursuant to section 28 of the Contract.

Reclamation's audit is a subset of the Department of the Interior audit.

18.4. Other Audits:

18.4.1. Other audits may be performed by the Contractors. If any Contractor(s) request(s) an audit, then all Contractors shall be provided the opportunity to participate in the audit. All audits shall be performed at the sole expense of the Contractors participating therein. The auditor(s) shall have access for any purpose at all reasonable times to applicable portions of all books and records of Reclamation and Western relating to transactions associated with the Contract. Prior to commencement of the audit, the participating Contractors shall have agreed to the details of conducting the audit. Such details may include, but shall not be limited to:

- a) the scope and work plan;
- b) whether the audit is to be conducted by an independent auditor or an audit team of the Contractors;

- c) the identity of the independent auditors and the estimated costs thereof, or the identity of the audit team and the basis for the audit team's estimated charges;
- d) how the costs and expenses of the audit shall be allocated among, and paid by, the Contractors participating in the audit; and
- e) distribution of the audit report.

18.4.2. The Contractors shall provide Reclamation and Western at least thirty (30) days advance written notice of intent to conduct an other audit, the audit scope, and the proposed work plan. Reclamation, Western, and the Contractors shall mutually agree upon the date on which the other audit will commence, which shall be within ninety (90) days of such notice.

19. **VISITOR FACILITIES:**

- 19.1. Reclamation will perform OM&R activities to the Visitor Facilities as necessary in accordance with applicable safety, security, regulatory requirements, or other Reclamation standards.
- 19.2. The cost of OM&R of the Visitor Facilities and related services shall be included in the BCP Ten Year Operating Plan and in the Annual Revenue Requirement.
- 19.3. Reclamation shall use its best efforts to establish, maintain, and maximize Visitor Related Revenues. The total amount of Visitor Related Revenues collected annually shall be deposited in the Colorado River Dam Fund. The revenue estimated to be available from Visitor Related Revenues shall be credited against the expenses estimated for the Annual Revenue Requirement.
- 19.4. Reclamation shall provide the E&OC an estimate of Visitor Related Revenues to be used in the PRS.
- 19.5. Reclamation shall at least annually review the Visitor Related Revenues at an E&OC and/or TRC meeting, including the existing fees, scheduled adjustments in

fees, actual and projected visitation, and total revenues from Visitor Related Revenues.

20. **REPLACEMENT AND REPAYABLE CAPITAL INVESTMENTS**: Replacements are expensed in full and documented as Replacement Capital Investments in the Fiscal Year following the year the replacements were placed in service. The purpose of this section is to identify costs and benefits of capital investments in future years. The Repayable Capital Investment is calculated as if the BCP utilized Readvances for replacements, amortized over a fifty (50) year period. The Increased Allocation Contractors, as defined in subsection 20.5.1 herein, will pay their proportionate share of the difference between the amount the contractors paid and the amount that would have been paid by the contractors if the replacements were funded by Readvances amortized over fifty (50) years, as of October 1, 2017 or October 1, 2067.

20.1. **Repayable Advances**: The term Repayable Capital Investments has the same meaning and replaces the defined term Repayable Advances as used in the Contract, and the term repayable advances as used in the Hoover Power Allocation Act of 2011 and the Conformed Criteria.

20.2. **Readvances**: Reclamation may request readvances from the Treasury for each Fiscal Year to cover all or some portion of the total cost of replacements required for the BCP pursuant to Section 5 of the Boulder Canyon Project Adjustment Act. It is recognized that budget priorities or constraints may prevent Reclamation from requesting or obtaining such readvances. Those replacements funded with readvances shall be amortized and repaid pursuant to the Boulder Canyon Project Adjustment Act.

20.3. **Replacements**:

20.3.1. Replacements are defined as one (1) or more item of equipment, facility, structure, or system that is classified as a "replacement" in the most recent

final BCP Ten Year Operating Plan; or fits into one (1) or more of the following categories unless classified as an item of maintenance in the annual revision of the final BCP Ten Year Operating Plan.

- a) "Unit of Property/Plant Item Service Life" as described in Table 6 of the Department of Energy, the Department of the Interior, and the Department of Army, Blue Covered Manual entitled "REPLACEMENTS, UNITS, SERVICE LIVES, FACTORS", (hereafter called the "Bluebook");
- b) "Summary of Units of Property and Service Lives" described in the Bluebook related table; and
- c) Any item covered by revisions to the documents described in a) and b) in this subsection.

20.3.2. In any Fiscal Year during the term of the contract in which the amounts required for replacements for the BCP are not funded by readvances from the Treasury, the amounts not funded by readvances shall be provided by revenues of the BCP pursuant to Section 1 of the Boulder Canyon Project Adjustment Act. Ninety-six (96) percent of the sum of the multi-year and annual replacement amounts, together with interest during construction on those expenditures which are for replacement items not placed in service in the year such expenditures are made, shall be Replacement Capital Investments. The remaining four (4) percent of replacement expenditures shall not be included in the Replacement Capital Investments calculation because of the 50-year life cycle and/or repayment period.

20.3.3. Reclamation agrees that moderating the Annual Revenue Requirement and the rate impacts of year-to-year changes in OM&R costs is a relevant criterion for scheduling OM&R in accordance with the BCP Ten Year

Operating Plan, and agrees to manage such expenditures over the Contract term with the objective of avoiding excessive or precipitous annual increases in OM&R expenses. Such commitment notwithstanding, Reclamation shall schedule OM&R as necessary for the safe and reliable operation of the BCP.

20.4. Repayable Capital Investments: Reclamation shall, in consultation with Western and the Contractors, annually calculate the Repayable Capital Investments, in accordance with the tables in Attachment 8.IA and the procedures in a) through d) of this subsection. Such calculations shall be completed by the end of the second month following the end of each Fiscal Year. The calculations shall:

- a) identify the replacements as multi-year or annual as shown in Tables 1 through 3 of Attachment 8.IA;
- b) identify the annual Replacement Capital Investments, which are amortized for fifty (50) years as shown in Tables 4 and 5 of Attachment 8.IA;
- c) identify the capital (principal) which the Treasury would have recovered annually and cumulatively each Fiscal Year from October 1, 2017, if replacements funded through the Annual Revenue Requirement had been funded by Readvances pursuant to Section 5 of the Boulder Canyon Project Adjustment Act and amortized on a levelized basis, as shown in Table 6 of Attachment 8.IA. For the calculation, the amortization repayment period shall be fifty (50) years, beginning with the first (1st) day of the Fiscal Year following the Fiscal Year in which the investment is placed in service. Interest rates incorporated in the calculation shall be determined in accordance with repayable interest rates as provided by Reclamation's Directives and Standards; and

d) identify the annual and cumulative difference between items b) and c) of this subsection as shown in Table 7 of Attachment 8.IA. The amount by which b) exceeds c) in this subsection shall constitute the amount of Repayable Capital Investments.

20.5. Recovery of Repayable Capital Investments: The calculation of payment obligations and the reimbursements due related to Repayable Capital Investments shall be in accordance with this subsection.

20.5.1. The value of "P" shall be calculated pursuant to subsection 20.5.2 herein for each Increased Allocation Contractor with a payment obligation (such "Increased Allocation Contractor" is a Contractor which receives an increase in the percentage of total BCP contingent capacity and/or firm energy after September 30, 2017, based on the percentage referenced in Attachment 5.IA and Attachment 6.IA). The value of "R" shall be calculated pursuant to subsection 20.5.3 herein for each Contractor with a reimbursement due. The cumulative value of P less the cumulative value of R calculated for all Contractors shall be equal to zero (0).

20.5.2. Responsibility for payment of Repayable Capital Investments shall be calculated for each Increased Allocation Contractor in accordance with the following formula:

$$P = 0.5 \times RCI \times (C2 - C1) + 0.5 \times RCI \times (E2 - E1) \text{ where:}$$

P = The portion of the Repayable Capital Investments to be paid by each Increased Allocation Contractor as defined in 20.5.1 herein.

RCI = The total amount of Repayable Capital Investments as of September 30, 2017, as illustrated in Table 7, Column 5 for Fiscal Year 2017, of Attachment 7.IA.

C1 = The Contractor's contingent capacity decimal percentage from Appendix G of the 1995 Agreement as referenced in Attachment 6.IA.

C2 = The Contractor's contingent capacity decimal percentage from Attachment 5.IA.

E1 = The Contractor's firm energy decimal percentage from Appendix G of the 1995 Agreement as referenced in Attachment 6.IA.

E2 = The Contractor's firm energy decimal percentage from Attachment 5.IA.

20.5.3. Entitlement to reimbursement for Repayable Capital Investments shall be allocated to each Decreased Allocation Contractor (such "Decreased Allocation Contractor" is a Contractor which either receives no allocation of BCP contingent capacity and/or firm energy after September 30, 2017, or receives a decrease in the percentage of total BCP contingent capacity and/or firm energy after September 30, 2017, based on the percentage referenced in Attachment 5.IA and Attachment 6.IA herein) in accordance with the following formula:

$$R = 0.5 \times RCI \times (C1 - C2) + 0.5 \times RCI \times (E1 - E2) \text{ where:}$$

R = The portion of the Repayable Capital Investments to be reimbursed to each Decreased Allocation Contractor.

The definitions for RCI through E2 are the same as above, relating to the formula for P, in subsection 20.5.2 herein.

20.5.4. Reclamation will issue bills for collection to the Schedule D Contractors in California and the Tribal Contractors in Arizona and Nevada for their proportionate shares of the Repayable Capital Investments, per subsection

20.5.2 herein. Reclamation will bill APA and CRC for the proportionate shares of the Repayable Capital Investments, per subsection 20.5.2 herein, for the Schedule D non-tribal entities in Arizona and Nevada which have contracted for BCP electric service with APA or CRC. Amounts collected will be refunded to the “Decreased Allocation Contractors”.

20.5.5. This process shall be conducted upon any new electric service contract or change in allocations of contingent capacity and/or firm energy in the future.

20.5.6. Repayable Capital Investments shall be reimbursed with interest to eligible Contractors, pursuant to subsection 20.5.3 herein, from the revenues collected by Western pursuant to subsection 20.5.2 herein.

Reimbursements shall be made in no more than five (5) annual installments commencing on September 30, 2018, and each year thereafter, with interest calculated from October 1, 2017. Such interest shall be compounded at the prime rate, as published in the Wall Street Journal, or such successor rate or publication which substitutes for the prime rate, on the last business day of Fiscal Year 2017 less one (1) percent.

20.5.7. Reimbursement to “Decreased Allocation Contractors” will be paid by October 31 of each year for five (5) years, with the first payment beginning October 31, 2018. Payment will represent Repayable Capital Investments plus interest collected from the “Increased Allocation Contractors” for that particular year.

20.6. FY 2068: Collection and reimbursement of Repayable Capital Investments at the end of the Contract term, September 30, 2067, shall follow the procedure outlined in subsection 20.5 herein, substituting appropriate dates, Attachments, and entities as necessary, subject to applicable laws, regulations, and policies.

20.7. Equal Treatment: If the United States shall implement funding of replacements on terms which are more favorable to a Contractor than the terms contained in this Restated Agreement, the United States shall promptly make such terms available to all Contractors.

21. **REIMBURSEMENT OF WORKING CAPITAL, REPAYABLE CAPITAL INVESTMENTS, AND RECONCILING ITEMS FOR REALLOCATION OF A CONTRACTOR'S ALLOCATION:**

21.1. In the event that Western reallocates a Contractor's Allocation under section 16 of the Contract, each party contracting with Western for all or part of such reallocation shall, within ninety (90) days after the reallocation becomes effective, reimburse the relinquishing Contractor for the relinquishing Contractor's proportionate shares of Working Capital, Repayable Capital Investments, and reconciling items, including but not limited to undelivered orders, sequestered amounts, and multi-year project funding, as of the last full month prior to the reallocation. The reimbursement will be in an amount proportionate to the portion of the reallocated Contractor's Allocation taken by such party, unless reimbursement for these items is waived by written notice to Western from the Contractor requesting the reallocation of their Contractor's Allocation. The total amounts of the relinquishing Contractor's proportionate shares of Working Capital, Repayable Capital Investments, and reconciling items shall be determined by Reclamation as of the last day of the calendar month immediately preceding the effective date of the reallocation under section 16 of the Contract. Reclamation shall determine the relinquishing Contractor's proportionate share of Working Capital in accordance with section 15 herein. Reclamation shall determine the relinquishing Contractor's proportionate share of reconciling items in accordance with current Reclamation and/or Department of the Interior standards. Reclamation shall determine the relinquishing

Contractor's proportionate share of Repayable Capital Investments in accordance with section 20 herein.

21.2. In the event a Contractor's Allocation is terminated by Western under section 17 of the Contract, the terminated Contractor shall not be entitled to reimbursement for Working Capital, Repayable Capital Investments, and reconciling items. The terminated Contractor's proportionate shares of Working Capital, Repayable Capital Investments, and reconciling items shall be reallocated in the same manner as Western reallocates the terminated Contractor's Allocation under section 17 of the Contract.

21.3. Upon request by a Contractor, Reclamation shall identify the amount of the Contractor's estimated share of their current contributions for Working Capital, Repayable Capital Investments, and reconciling items, as of the last full month prior to the request.

22. **APPLICABLE LAWS:** Any reference in the Contract or this Restated Agreement, to any Federal act, statute, or regulation, shall be deemed to be a reference to such act, statute, or regulation and all amendments and supplements thereto in existence on the date of execution of the Contract or this Restated Agreement, unless specifically noted otherwise; provided, that nothing in the Contract or this Restated Agreement is intended to limit the sovereign authority of Congress. The charges for electric service under the Contract are currently established to recover the costs and financial obligations associated with the BCP as specified by law. In the event that a Change in Law materially impairs any right, benefit, or interest of a Contractor under the Contract or this Restated Agreement, or imposes any material increase in cost, or reduction in allocation of capacity or energy, or otherwise materially changes an obligation on a Contractor under the Contract or this Restated Agreement, the Parties shall promptly meet and discuss in good faith regarding possible changes to the Contract, or this Restated Agreement, to mitigate the impact of the

Change in Law. The rights and remedies under this section and section 24 of the Contract are cumulative and in addition to, not exclusive of or in substitution for, any other rights and remedies available under law or equity.

23. **RESTATED AGREEMENT**: Except as provided in section 31 herein, it is mutually understood and agreed that this Restated Agreement represents the complete agreement of the Parties, and that no amendment, alteration or variation of the terms, conditions, covenants, and obligations of this Restated Agreement, shall be valid and binding unless made in writing and signed by the Parties hereto.
24. **NOTICE**: Any notice, demand, or request specifically required or permitted under this Restated Agreement to be in writing shall be deemed properly served, given, or made 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 herein, the sending Party shall keep a contemporaneous record of such communications, as objective proof of delivery.
25. **DISPUTES**: Any unresolved issues or any disputes arising out of this Restated Agreement shall be subject to section 20 of the Contract. Aside from the Tribal Contractor's limited waiver to submit to dispute resolution related to the Contracts or this Restated Agreement as described in subsections 20.3 and 20.4 of the Contract, nothing in this Restated Agreement, or in any current or future schedules, attachments, exhibits, amendments, or addenda, is intended to be or shall be construed as a waiver of any Tribal Contractor's sovereign immunity.
26. **RELATIONSHIP OF PARTIES**: The covenants, obligations, and liabilities of the Parties are intended to be separate and not joint or collective, and nothing herein contained

shall be construed to create an association, joint venture, trust, or partnership of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities as herein provided. No Party shall be the agent of or have a right or power to bind any other Party or to waive any other Party's rights without such other Party's express written consent. Default in the performance of any obligation under this Restated Agreement, or lack of capacity to enter into this Restated Agreement, on the part of any Contractor shall not affect the performance of this Restated Agreement and the enforceability thereof between the United States and each of the other Contractors.

27. **FEDERAL/TRIBAL CONTRACTOR CONSULTATIONS AND**

COMMUNICATIONS: Nothing in this Restated Agreement, including but not limited to sections 7, 8, and 9 herein, shall limit the United States or Federally Recognized Indian Tribes and Tribal Contractors which are signatories to this Restated Agreement from conducting government-to-government consultations and communications at any time.

28. **MODIFICATION AND WAIVER**: Any modification, extension, or waiver of any provision or requirement of the Contract or this Restated Agreement granted for the benefit of Contractor in connection with electric service from the BCP shall not be denied to any other Contractor, provided that any Federal obligations due to the unique constitutional and political status of Federally Recognized Indian Tribes shall remain exclusive to Tribal Contractors. Any waiver at any time by any Party hereto of its rights with respect to a default or any other matter arising under or in connection with this Restated Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter.

29. **EFFECT OF SECTION HEADINGS**: Other than definitions, section headings appearing in this Restated Agreement are inserted for convenience only, and shall not be considered as interpretation of text.

30. **RESOLUTIONS**: Resolutions adopted in accordance with subsection 8.2.5 herein will be attached and made part of this Restated Agreement.

31. **EXHIBITS AND ATTACHMENTS:** Any future exhibit(s), as well as Attachments 1.IA through 10.IA, are incorporated by reference herein and shall be considered a part of this Restated Agreement. Any future exhibit(s) may be added or updated, from time to time by written consent of the Parties, which consent shall not be unreasonably withheld. Any future exhibit(s) shall be in force and effect until superseded by a subsequent exhibit executed by the Parties. Changes, additions, or modifications to the Attachments may be made by Reclamation and Western as appropriate; provided, that Reclamation and Western shall provide to the Contractors written notice of, and an opportunity to comment on, any proposed changes, or addition of an Attachment, at least thirty (30) days prior to the effective date of such revised Attachment and at least ninety (90) days for an additional Attachment. Attachments shall be in force and effect until superseded by a subsequent Attachment. This section does not permit and shall not be interpreted to allow Reclamation or Western to distribute or issue any Attachment on a subject matter not addressed in an initial Attachment without the prior written consent of the Contractors.
32. **SUCCESSOR OR ASSIGNEE:** Any successor or assignee of the rights of any Party, whether by voluntary transfer, judicial or foreclosure sale or otherwise, shall be subject to all the provisions and conditions of the Contract and this Restated Agreement to the same extent as though such successor or assignee were the original Party under the Contract and this Restated Agreement, and the execution of a mortgage or trust deed, or judicial or foreclosure sale made thereunder, shall not be deemed voluntary transfer within the meaning of this section. No assignment or transfer of any rights under the Contract and this Restated Agreement shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of the Contract and this Restated Agreement.
33. **EXECUTION BY COUNTERPART:** This Restated Agreement 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 Restated Agreement may be detached without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Restated Agreement identical in form hereto, by having attached to it one (1) or more signature pages.

34. **AUTHORITY TO EXECUTE**: Each individual signing this Restated Agreement certifies that the Party represented has duly authorized such individual to execute this Restated Agreement that binds and obligates the Party.

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