

CONSTRUCTION AGENCY AGREEMENT BETWEEN
THE BONNEVILLE POWER ADMINISTRATION
AND NORTHWEST INFRASTRUCTURE FINANCING CORPORATION

This CONSTRUCTION AGENCY AGREEMENT (this "Agreement"), executed _____, 2003, by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the ADMINISTRATOR of the BONNEVILLE POWER ADMINISTRATION ("Bonneville"), and NORTHWEST INFRASTRUCTURE FINANCING CORPORATION ("Owner") a corporation formed and existing under the laws of the State of Delaware. Bonneville and Owner are hereinafter referred to collectively as "Parties."

W I T N E S S E T H :

WHEREAS the Owner is a corporation, duly organized and existing under the laws of the State of Delaware and is authorized to own and lease electric transmission facilities;

WHEREAS Bonneville is authorized by law to construct, operate and maintain transmission facilities in the Pacific Northwest Region, to provide transmission and other services, and to enter into agreements to carry out such activities pursuant to the Bonneville Project Act of 1937, the Federal Columbia River Transmission System Act of 1974, and other law;

WHEREAS the Owner desires to engage Bonneville to provide for the design, construction, installation, testing and energization of approximately 63 miles of 500 kV electric power transmission line from Schultz Substation to the Wautoma Substation in the State of Washington and certain other lines, equipment and fixtures as hereinafter described (the "Project");

WHEREAS, prior to the date hereof the parties have been negotiating this Agreement and Bonneville has taken certain actions in anticipation of the execution of this Agreement;

WHEREAS the Owner intends to obtain financing to pay the costs of design, construction, installation, testing and energizing of the Project;

NOW, THEREFORE, the Parties hereto mutually agree as follows:

1. Definitions:

(a) "Costs of Construction" shall mean all costs related to constructing the Project to completion and energization, which costs shall include but shall not be limited to (i) all costs of environmental review, engineering and architectural services with respect to the Project, including the cost of design, test borings, surveys, estimates, plans and specifications and for

supervising construction, as well as for the performance of all other duties required by or consequent upon the proper construction of, and the making of alterations, renovations, additions and improvements in connection with, the completion of the Project; (ii) all costs paid or incurred for labor, materials, services, supplies, machinery, equipment and other expenses and to contractors, suppliers, builders and materialmen in connection with the construction of the Project; (iii) all costs which are required to be paid, under the terms of any contract or contracts, for the completion of the Project, and (iv) all Costs of Construction, Delay, Suspension or Termination.

(b) “Costs of Construction, Delay, Suspension or Termination” shall mean (i) all costs of environmental review, engineering and architectural services with respect to the Project, including the cost of design, test borings, surveys, estimates, plans and specifications and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper construction of, and the making of alterations, renovations, additions and improvements in connection with, the delay, suspension or termination of the Project; (ii) all costs paid or incurred for labor, materials, services, supplies, machinery, equipment and other expenses and to contractors, suppliers, builders and materialmen in connection with the delay, suspension or termination of the Project; and (iii) all costs which are required to be paid, under the terms of any contract or contracts, for the delay, suspension or termination of the Project.

(c) “Project” shall mean that certain 63 mile 500 kv transmission line to be built between the Schultz and Wautoma Substations, and other associated transmission lines towers and related equipment, as described in Exhibit A [TO BE EXPANDED]

2. Term of Agreement. This Agreement shall be effective when it is executed by the Parties and shall terminate at the earlier of the time when Project construction is completed as certified in writing to Owner by Bonneville or is terminated as directed by Owner as provided in Section 9 hereof.

3. Exhibits. The following exhibits are hereby made part of this agreement:

Exhibit A, Project Description

Exhibit B, Provisions Required by Statute or Executive Order

4. Construction of the Project.

(a) Owner hereby engages Bonneville to, and Bonneville shall, design, construct, test, install and energize the Project. Bonneville shall obtain all goods and services necessary to construct the Project on behalf of Owner. Bonneville may perform its obligations hereunder through its own full-time or part-time employees, persons working pursuant to contracts with Bonneville and/or independent contractors. The Parties agree that all actions taken by Bonneville prior to the date of execution of this Agreement relating to the design, construction, testing, installation or construction of the Project shall be Costs of Construction covered by, and payable pursuant to, this Agreement. Bonneville shall be responsible for performing its obligations hereunder and Owner shall not be liable for performance of such obligations or otherwise be liable in connection with the design, construction, testing, installation or energizing of the Project.

(b) Bonneville shall ensure that all tasks necessary to perform its obligations hereunder are accomplished, including identifying qualified sources and soliciting, negotiating, awarding and administering contract(s).

(c) Bonneville shall be responsible for obtaining all permits, agreements, licenses, and other permissions required to construct, test, energize, and use the Project.

(d) Nothing herein shall limit Bonneville's right to install fiber optic cable (and other facilities not used for the transmission of power across the lines) on the Project while performing its obligations hereunder. Such fiber optic cable and other facilities shall not be part of the Project, shall be owned by Bonneville (and not the Owner) and the Owner shall have no rights thereto or liability in connection therewith.

5. Ownership of Facilities. The Owner shall have all rights of title and ownership of the Project [will Bonneville retain ownership rights to any part of the Project?]

6. Ownership of Interest in Land. Bonneville shall hold in the name of the United States all real property rights required to design, construct, test, install, energize and operate the Project on behalf of Owner. Bonneville shall hold, in the name of the United States, all easements, rights of way, and any other interests in land under the Project.

7. Rights to Use Easements. Bonneville hereby grants to the Owner the right of use to Bonneville's prior easements, rights of way, and other interests in land as is reasonably necessary for the construction, installation, testing, energizing, operation and maintenance of the Project. Owner shall also have such access to such real property as is necessary to inspect the Project, provided that such inspection shall be granted by Bonneville upon reasonable notice and upon such other reasonable conditions determined by Bonneville with regard to safety and security. Such rights of use shall continue for so long as the Owner retains ownership of the Project.

8. Lessee's Rights of Use. Nothing in this agreement shall interfere with the right to exclusive use and enjoyment of the Project, provided to the lessee named in the lease agreement relating to the Project, dated as of _____, 2004, between the Owner and the lessee named therein (the "Lease Agreement") whether during construction of the Project or during any delay, suspension or termination of construction of the Project.

9. Delay, Suspension, or Termination of Construction. Bonneville shall suspend, delay or terminate construction of the Project at the direction of the Owner.

10. Acknowledgment of Financing; Payment of Construction Costs and Use of Funds.
(a) Bonneville acknowledges that the Owner is issuing bonds (the "Bonds") to pay the Costs of Construction pursuant to that certain indenture of trust, dated as of the date hereof, by and between the Owner and [Trustee's Name], as trustee named therein (the "Indenture") and that the Owner's sole source of funds for the Costs of Construction shall be the proceeds of such Bonds. Bonneville acknowledges that, if and to the extent that it proceeds prior to the issuance of such Bonds by the Owner, it does so at its own risk.

(b) As provided in the Indenture, from time to time Bonneville shall submit to the Trustee referred to in the Indenture invoices for Costs of Construction. Such invoices shall

describe the materials, equipment, services or other items theretofore obtained or to be obtained by Bonneville and used or to be used in the design, construction, testing, installation, or energization of the Project or in effecting a delay, suspension or termination of construction of the Project on behalf of Owner hereunder, and shall include with each invoice one or more certifications by an authorized representative of Bonneville that the costs identified in the invoices are Costs of Construction. Such invoices may include costs incurred prior to the date hereof for the Project. As provided in the Indenture, upon receipt of such invoices and certificates, the Trustee shall pay the invoices either to Bonneville or to such other person or entity as Bonneville may direct. DISCUSS: If the Costs of Construction are in excess of \$[the amount of bond proceeds less the costs of issuance], the Owner, after receiving written request from Bonneville, hereby agrees to consider the issuance of additional bonds in a principal amount as is specified in such written request in accordance with the applicable provisions of the Indenture.

11. Salvage, Sale of Surplus Material. If the Project is terminated and Bonneville sells any salvageable portion thereof, the proceeds of such sale shall be deposited with the Trustee in the Bond Fund.

12. Environmental Requirements. The Parties agree to comply fully with all applicable requirements of federal, state and local environmental laws and to mitigate and abate adverse environmental impacts in accordance with such laws.

13. Liability. Bonneville shall at all times protect, indemnify and hold the Owner harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses (including reasonable attorneys fees), taxes and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), other than, with respect to the Owner, losses arising from the negligence or willful misconduct of the Owner, arising in connection with the Project, including without limitation the design, construction, testing, installation and energization of the Project and the effecting of any Project construction delay, suspension or termination. Such indemnification set forth above shall be binding upon the Lessee for any and all claims, demands, expenses, liabilities and taxes set forth herein and shall survive the expiration or termination of this Agreement.

14. Limited Recourse. No recourse under any obligation, covenant or agreement of the Owner contained in this Agreement shall be had against J.H. Management Corporation (“JHM”) or any incorporator, stockholder, officer, director or employee of the Owner or JHM, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that this Agreement is solely a corporate obligation of the Owner, and that no personal liability whatever shall attach to or be incurred by the incorporators, stockholders, officers, directors or employees of the Owner or JHM, or any of them under or by reason of any of the obligations, covenants or agreements of the Owner contained in this Agreement, or implied therefrom, and that any and all personal liability for breaches by the Owner of any of such obligations, covenants or agreements either at common law or at equity, or by statute or constitution, of JHM and every such incorporator, stockholder, officer, director or employee is hereby expressly waived as a condition of and in consideration for the execution of this Agreement; provided, however, that nothing in this Section 14 shall

relieve any of the foregoing persons or entities from any liability arising from his, her or its willful misconduct or intentional misrepresentation.

15. Confidentiality. [TO COME]

16. Choice of Law. This agreement shall be interpreted, construed, and implemented under Federal law.

17. Irrevocable Agreement. This agreement shall be irrevocable. The sole recourse of the Parties in the event of a dispute shall be for arbitration according to the rules of the American Arbitration Association. Relief shall be limited to the payment of funds.

18. Entire Agreement. This agreement sets forth the entire agreement of the Parties with respect to the subject matter of this agreement and supersedes all prior agreements with respect to the subject matter of this agreement. The rights and obligations of the Parties hereunder shall be subject to and governed by this agreement. The headings used in this agreement are for reference only and shall not affect the interpretation of this agreement.

19. Notices. All written notices under this agreement shall be written and shall be considered delivered when received whether by hand delivery, certified mail, or electronic facsimile as follows:

If to Bonneville:

Administrator
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

If to Owner:

TITLE

ADDRESS

IN WITNESS WHEREOF, the Parties hereto have executed this agreement in several counterparts.

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By: _____
Title: Administrator
Date:

NORTHWEST INFRASTRUCTURE FINANCING CORP.

By: _____
Title:
Date:

EXHIBIT A
PROVISIONS REQUIRED BY STATUTE OR
EXECUTIVE ORDER

1. CONTRACT WORK HOURS AND SAFETY STANDARDS

This contract, if and to the extent required by applicable law and if not otherwise exempted, is subject to the following provisions:

(a) **Overtime Requirements**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, shall require or permit any laborer or mechanic in any workweek in which such worker is employed on such work to work in excess of eight (8) hours in any calendar day or in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times such worker's basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, as the case may be.

(b) **Violation, Liability for Unpaid Wages; Liquidated Damages**

In the event of any violation of the provisions of subsection (a), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for such employee's unpaid wages. In addition, such contractor and subcontractor shall be liable to the Government for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of subsection (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed in such work in excess of eight (8) hours or in excess of such employee's standard workweek of forty (40) hours without payment of the overtime wages required by subsection (a) above.

(c) **Withholding for Unpaid Wages and Liquidated Damages**

Bonneville may withhold, or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in subsection (b) above.

(d) **Subcontracts**

The contractor shall insert in any subcontracts the clauses set forth in subsections (a) through (c) of this provision and also a clause requiring the subcontractors to included these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(e) **Records**

The contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three (3) years from the completion of the contract.

2. CONVICT LABOR

In connection with the performance of work under this contract, the contractor agrees, if and to the extent required by law and if not otherwise exempted, not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 19, 1973.

3. EQUAL OPPORTUNITY

During the performance of this contract, if and to the extent required by applicable law and if not otherwise exempted, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeships. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Bonneville setting forth the provisions of the Equal Opportunity clause.
- (b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (c) The contractor will send to each labor union or representative or workers with which said contractor has a collective bargaining agreement or other contract or understanding, a notice, to be provided by Bonneville, advising the labor union or worker's representative of the contractor's commitments under the Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- (e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to said contractor's books, records, and accounts by Bonneville and the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the contractor's non-compliance with the Equal Opportunity clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with the procedures authorized in Executive Order 11246 or September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as Bonneville may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by Bonneville, the contractor may request the Government to enter into such litigation to protect the interests of the Government.

4 INTEREST OF MEMBER OF CONGRESS

No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share of part of this contract or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to such contract if made with a corporation for its general benefit.

5. ADDITIONAL PROVISIONS

The contractor agrees to comply with the clauses for Government contracts contained in the following statutes, Executive Orders, and regulations to the extent applicable:

- (a) the Rehabilitation Act of 1973, Public Law 93-112, as amended, and 41 CFR 60-741 (affirmative action for handicapped workers);
- (b) the Vietnam Era Veterans Readjustment Assistance Act of 1974, Public Law 92540, as amended, and 41 CFR 60-250 (affirmative action for disable veterans and veterans of the Vietnam era);

- (c) the Davis-Bacon Act, 40 U.S.C. 27b et seq., and 29 CFR 5 (required wage rates for public buildings and works);
- (d) Executive Order 11625 and 41 CFR 1-1.1310-2 (utilization of minority business enterprises);
- (e) Certification of Nonsegregated Facilities , 41 CFR 1-12.803-10.

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