

GSA Areawide Public Utility Contract

For

Electric Service, Energy Management Service and/or  
Services Provided Under the Appropriate Regulatory  
Authority

**Contract No. 47PA0724D0008**

between the

**United States of America**

and

**Arizona Public Service Company**

**Franchised Service Areas of Central Arizona**

Negotiated Areawide Contract

**No. 47PA0724D0008**

between the

**United States of America  
And  
Arizona Public Service Company**

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NEGOTIATED AREAWIDE CONTRACT

No. 47PA0724D0008

BETWEEN THE

**UNITED STATES OF AMERICA**

AND

**Arizona Public Service Company**

**Preamble and Whereas Clauses**

THIS AREAWIDE CONTRACT FOR Electric Service, Energy Management Service and/or Services Provided Under the Appropriate Regulatory Authority is executed this 14th day of March 2024 between the UNITED STATES OF AMERICA, acting through the Administrator of General Services (hereinafter referred to as the "Government"), pursuant to the authority contained in Section 201(a) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 501(b)(1), and, Arizona Public Service Company, a corporation organized and existing under the laws of the State of Arizona and having its principal office and place of business at 400 North Fifth Street, Phoenix, Arizona 85004 (hereinafter referred to as the "Contractor");

WHEREAS the Contractor is an electric, utility company that is regulated by the Arizona Corporation Commission (hereinafter referred to as "Commission") and the Federal Energy Regulatory Commission (hereinafter referred to together as the "Commissions");

WHEREAS, the Contractor now has on file with the Commissions all of its effective tariffs, rate schedules, riders, rules and regulatory terms and conditions of Service, as applicable; and

WHEREAS, with some exceptions, the Government is generally required by Chapter 1 of Title 48 of the Federal Acquisition Regulation (FAR), 48 CFR 41.204, to enter into a bilateral contract for Electric Service, Energy Management Service and/or Services Provided Under the Appropriate Regulatory Authority at each Federal facility where the value of the Services provided is expected to exceed the simplified acquisition threshold; and

WHEREAS, where the Government has an areawide contract in effect with a particular utility, then such service is normally to be procured thereunder; and

WHEREAS the Government is now purchasing such electric, energy management service from the Contractor under some other service arrangement; and

WHEREAS the Contractor and the Government mutually desire that this Areawide Contract be used by the agencies of the Government in obtaining electric, energy management service and/or services provided under the Appropriate Regulatory Authority from the Contractor and to facilitate the potential partnering arrangements as encouraged and authorized by 10 U.S.C. 2911-2918 and 42 U.S.C. 8256; and

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereby agree as follows:

## **ARTICLE 1. DEFINITIONS**

**1.1.** As used in this Areawide Contract, the following terms have the meaning as prescribed below:

- (a) "**Agency**" means any Federal department, agency, or independent establishment in the executive branch of the Government, any establishment in the legislative or judicial branches of the Federal Government, or any wholly/mixed ownership Government corporation, as defined in the Government Corporation Control Act, a list of which Agencies may be found at ADM 4800.2I on the General Services Administration website.
- (b) "**Appropriate Regulatory Authority**" means the Arizona Corporation Commission and the Federal Energy Regulatory Commission
- (c) "**Areawide Contract**" means this master contract entered into between the Government and Contractor to cover the Service acquisitions of all Federal agencies in the franchised certificated service territory from Contractor for a period not to exceed ten (10) years.
- (d) "**Authorization**" means an order form used to acquire Services under this Areawide Contract (see **Exhibit "A"** AUTHORIZATION FOR ELECTRIC SERVICE, CHANGE IN ELECTRIC SERVICE, OR DISCONNECTION AND/OR TERMINATION OF ELECTRIC SERVICE, **Exhibit "B"** AUTHORIZATION FOR ENERGY MANAGEMENT SERVICE, OR DISCONNECTION OF ENERGY MANAGEMENT SERVICE, **Exhibit "C"** AUTHORIZATION FOR THE PROVISION OF SERVICES PROVIDED UNDER THE APPROPRIATE REGULATORY AUTHORITY);
- (e) "**Class of Service**" or "**Service Classification**" means those categories of service established in the Contractor's Tariff as filed with the Commissions.
- (f) "**Connection Charge**" means a contractor's charge for facilities on the Contractor's side of the delivery point which facilities (1) are required to make connections with the nearest point of supply and (2) are installed, owned, maintained, and operated by the Contractor in accordance with the Contractor's Tariffs, Contractor's Terms and Conditions, and the Commission's rules and regulations.
- (g) "**Contractor's Tariffs**" means Arizona Public Service Company Utility Service Tariffs, and includes rate schedules, covenants, riders, rules, regulations, and regulated terms and conditions of service as may be modified, amended, or supplemented by the Contractor from time to time, and approved by the Commission where required.
- (h) "**Contractor's Terms and Conditions**" for this Areawide Contract, means the additional terms, conditions, policies, procedures, payment terms and prices established by the Contractor for services subject to the oversight and regulation of the Commission that are not specifically set forth in the Contractor's Tariffs and that may be modified, amended, or supplemented by the Contractor from time to time and approved by the Commission where required.
- (i) "**Electric Service**" means regulated electric commodities, transmission, distribution, and/or related services.
- (j) "**Energy Conservation Measure (ECM)**" means any specific energy or water related project or service intended to provide energy savings and/or demand reduction in Federal facilities (Reference Article 18 herein). (Energy Conservation Measure and Demand Side Management Measure are considered equivalent terms.)
- (k) "**Energy Management Service (EMS)**" means any project or service (including any ECM) that reduces and/or manages energy demand or water use in a facility as well those services that determine whether such reductions are feasible (such as energy audits and any ancillary services necessary to ensure the proper operation of the energy or water conservation measure). Such projects and services also include, but are not limited to, operating, maintenance and commissioning services. To be considered an EMS, the project or service must satisfy all of the following requirements:
  1. The EMS project or service must produce measurable energy or water use reductions, cost reductions, or measurable amounts of controlled energy and/or water use;
  2. The EMS project or service must be directly related to the use of energy or water or directly control the use of energy or water;
  3. The preponderance of work covered by the EMS project or service (measured in dollars) must be related to Items 1 and 2 above; and
  4. The EMS project or service must be an improvement to real property or any action that is necessary to ensure the functionality of the EMS measure.
- (l) "**Hazardous Materials**" means
  - i. those substances defined as "hazardous substances" pursuant to Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.);
  - ii. those substances designated as a "hazardous substance" pursuant to Section 311(b)(2)(A) or as a "toxic pollutant" pursuant to Section 307(a)(1) of the Clean Water Act (33 U.S.C. § 1251 et seq.);

- iii. those substances defined as "hazardous materials" pursuant to Section 103 of the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.);
- iv. those substances regulated as a "chemical substance or mixture" or as an "imminently hazardous chemical substance or mixture" pursuant to Section 6 or 7 of the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.);
- v. those substances defined as "contaminants" pursuant to Section 1401 of the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), if present in excess of permissible levels;
- vi. those substances regulated pursuant to the Oil Pollution Act of 1990 (33 U.S.C. § 2701 et seq.);
- vii. those substances defined as a "pesticide" pursuant to Section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended by the Federal Environmental Pesticide Control Act of 1972 and by the Federal Pesticide Act of 1978 (7 U.S.C. § 136 et seq.);
- viii. those substances defined as a "source", "special nuclear" or "by-product" material pursuant to Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. § 2011 et seq.);
- ix. those substances defined as "residual radioactive material" in Section 101 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. § 7901 et seq.);
- x. those substances defined as "toxic materials" or "harmful physical agents" pursuant to Section 6 of the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.);
- xi. those substances defined as "hazardous air pollutants" pursuant to Section 112(a)(6), or "regulated substance" pursuant to Section 112(ra)(2)(B) of the Clean Air Act (42 U.S.C. § 7401 et seq.);
- xii. those substances defined as "extremely hazardous substances" pursuant to Section 302(a)(2) of the Emergency Planning & Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.);
- xiii. those other hazardous substances, toxic pollutants, hazardous materials, chemical substances or mixtures, imminently hazardous chemical substances or mixtures, contaminants, pesticides, source materials, special nuclear materials, by-product materials, residual radioactive materials, toxic materials, harmful physical agents, air pollutants, regulated substances, or extremely hazardous substances defined in any regulations promulgated pursuant to any environmental law, and
- xiv. all other contaminants, toxins, pollutants, hazardous substances, substances, materials, and contaminants, polluted, toxic and hazardous materials, the use, disposition, possession, or control of which is regulated by one or more laws.

- (m) "**Hazardous Wastes**" means those substances defined as "hazardous waste" pursuant to Section 1004(5) of the Resource, Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), and those other hazardous wastes defined in any regulations promulgated pursuant to any environmental law.
- (n) "**Ordering Agency**" means any Agency that enters into a bilaterally executed Authorization for procurement of **Electric Service, Energy Management Service and/or Services Provided Under the Appropriate Regulatory Authority** under this Areawide Contract.
- (o) "**Service(s)**" means any Electric Service, ECM, EMS, and/or other service available from the Contractor pursuant to Contractor's Tariff, Contractor's Terms and Conditions, or as otherwise set forth in an Authorization.
- (p) "**Termination Authorization**" means an order form used to discontinue or disconnect Services under this Areawide Contract (see **Exhibit "A"** AUTHORIZATION FOR ELECTRIC SERVICE, CHANGE IN ELECTRIC SERVICE, OR DISCONNECTION AND/OR TERMINATION OF ELECTRIC SERVICE, **Exhibit "B"** AUTHORIZATION FOR ENERGY MANAGEMENT SERVICE, OR DISCONNECTION OF ENERGY MANAGEMENT SERVICE, **Exhibit "C"** AUTHORIZATION FOR THE PROVISION OF SERVICES PROVIDED UNDER THE APPROPRIATE REGULATORY AUTHORITY);

**1.2.** This Article is hereby expanded to include the additional definitions contained in FAR 52.202-1, Definitions (June 2020), which are incorporated herein by reference.

## **ARTICLE 2. SCOPE AND DURATION OF CONTRACT**

**2.1.** This Areawide Contract shall be in effect on and after the 14<sup>th</sup> day of March 2024 ("**Effective Date**"), and shall continue for a period of ten (10) years thereafter ("**Term**"), except that the Government, pursuant to the clause contained in FAR 52.249-2, incorporated into this Areawide Contract under Article 14.1, or the Contractor, upon sixty (60) days written notice to the Government, and without liability to the Government or any Ordering Agency, may terminate this Areawide Contract, in whole or in part, when it is in their respective interest to do so, provided, however,

that neither the stated duration of this Areawide Contract nor any other termination of it, in whole or in part, pursuant to such incorporated clause, this Article 2.1, or otherwise, shall be construed to affect any obligation for any payment, charge, rate, or other matter that may be imposed pursuant to the Contractor's Tariffs, Contractor's Terms and Conditions, or in any Authorization entered into pursuant to this Areawide Contract.

**2.2.** Authorizations may be executed under this Areawide Contract at any time during the Term of this Areawide Contract, up to and including the last date this Areawide Contract is effective. The term of any Authorization executed under this contract may be for a term of up to ten (10) years, which term may extend beyond the Term of this Areawide Contract. Authorizations executed pursuant to the authority under 42 U.S.C. Section 8256 may be for a term of up to 25 years, as long as the other requirements of this Section are met, and the term may extend beyond the Term of the Areawide Contract. Termination, modification, or expiration of the Areawide Contract shall not affect in any way any Authorizations previously entered into under this Areawide Contract.

**2.3.** The provisions of this Areawide Contract shall not apply to the Contractor's Service to any Agency until both the Ordering Agency and the Contractor execute a written Authorization for Electric Service, Energy Management Service and/or Services Provided Under the Appropriate Regulatory Authority. After both the Ordering Agency and Contractor have signed the Authorization, the Contractor agrees to furnish to the Ordering Agency, and the Ordering Agency agrees to purchase from the Contractor, the Services described in the Authorization for the installation(s) or facility(ies) named in the Authorization.

**2.4.** Nothing in this Areawide Contract shall be construed as precluding the Ordering Agency and the Contractor from entering into an Authorization for negotiated rates or Service of a special nature, provided such negotiated rates or service are in accordance with the rules and regulations of the Commission, if applicable.

**2.5.** This Areawide Contract may be used by an Ordering Agency to obtain any Services that are offered by Contractor. Services provided under this Areawide Contract may not be supplied in a manner inconsistent with applicable law or applicable regulations.

**2.6.** To facilitate an Ordering Agency obtaining services under Contractor's Tariffs, an Exhibit "C", Authorization for Provision of Services Provided Under the Appropriate Regulatory Authority, has been included in this Areawide Contract. This Authorization is designed to be used by an Ordering Agency when a change requested by the Ordering Agency to Contractor's Tariffs or Terms and Conditions is necessary, and if required, has been approved by the Appropriate Regulatory Authority.

### **ARTICLE 3. EXISTING CONTRACTS**

**3.1.** The parties agree that an Agency currently acquiring Service from the Contractor under a separate written contract may continue to do so until that contract expires or until such time as the Agency and the Contractor mutually agree to terminate that separate written contract and have such Service provided pursuant to this Areawide Contract by executing an appropriate Authorization or Authorizations.

**3.2.** Existing special rates and services of a special nature currently provided under a separate written contract may be continued under the Authorizations described in Article 3.1 if requested by the Ordering Agency and agreed upon by the Contractor.

### **ARTICLE 4. AUTHORIZATION PROCEDURE AND SERVICE DISCONNECTION**

**4.1.** To obtain or change Service under this Areawide Contract, the Ordering Agency shall complete the appropriate Authorization and forward it to the Contractor. Upon the request of the Ordering Agency, the Contractor shall endeavor to provide reasonable assistance to the Ordering Agency in selecting the Service Classification which may be most favorable to the Ordering Agency. Upon execution of an Authorization by both the Contractor and the Ordering Agency, the date of initiation or change in Service shall be effective as of the date specified in the Authorization. In the event a date is not specified in the Authorization as the effective date, the later date on which the Authorization was signed by the Ordering Agency, or the Contractor shall be the effective date of the Authorization. An executed copy of the Authorization shall be transmitted by the Ordering Agency to GSA at the address provided in Article 16.1.

**4.2.** During the Term of this Areawide Contract, effective Authorizations need not be amended, modified, or changed by an Ordering Agency to reflect changes in: accounting and appropriation data, the requirements of Contractor's Tariff, Contractor's Terms and Conditions, the Contractor's cost of purchased fuel, or the estimated annual cost of Service. Such changes are considered internal to the party involved. Where changes are required in effective Authorizations because of a change in the Service requirements of an Ordering Agency, an amended Authorization shall be mutually agreed upon and executed.

**4.3.** An Ordering Agency or the Contractor may discontinue Service provided pursuant to this Areawide Contract to a particular Federal facility or installation by delivering a written Termination Authorization to the other. Such

discontinuance of Service by an Ordering Agency or the Contractor shall be in accordance with the terms of this Areawide Contract and the Contractor's Tariff, Contractor's Terms and Conditions, or as otherwise provided under a particular Authorization.

**4.4.** In the event the Areawide Contract is not renewed at the expiration of the contract term, any active Authorizations for services shall be controlled by the Areawide Contract terms and conditions in effect at the time of award.

**4.5** The Contracting Officer of the Authorization shall review the clauses in Article 14 and include the relevant clauses in the Authorization before forwarding to the Contractor for review.

#### **ARTICLE 5. RATES, CHARGES, AND PUBLIC REGULATION**

**5.1.** A complete listing of all Contractor's Tariffs, as amended, supplemented, modified, and revised from time to time, is available to the Government and any Ordering Agency electronically at the Contractor's website accessible via <https://www.aps.com/en/Utility/Regulatory-and-Legal/Rates-Schedules-and-Adjustors>.

**5.2.** Subject to the provisions of Article 2.3, all Electric Service, Energy Management Service and/or Services Provided Under the Appropriate Regulatory Authority purchased under this Areawide Contract, as well as any other actions taken under this Areawide Contract shall be in accordance with, and subject to, the Contractor's Tariffs, Contractor's Terms and Conditions, and any other terms and conditions set forth in an Authorization, except to the extent that the same are preempted by Federal law. Throughout the Term of the Areawide Contract, the Government shall have full access to the Contractor's currently effective Tariffs. In the event the Contractor's Tariffs become inaccessible via the internet or the Ordering Agency does not have access to the internet, the Contractor agrees to provide newly effective or amended Tariffs in accordance with the Contractor's Tariff distribution practices, policies, and procedures applicable to other customers.

**5.3.** If, during the Term of this Areawide Contract, the Commission approves a change in rates for Services obtained under an Authorization in effect hereunder, the Contractor agrees to continue to furnish, and the Ordering Agency agrees to continue to pay for, those Services at the newly approved rates from and after the date such a rate change is made effective. As provided in Article 4.2, modification of any Authorization hereunder is not necessary to implement higher or lower rates.

**5.4.** The Contractor hereby represents and warrants to the Government that the Service rates available to any Ordering Agency for services subject to the oversight and regulation of the Commission hereunder shall at all times not exceed those available to any other customer served under the same Service Classification for the same or comparable service, under like conditions of use. Nothing herein shall require the Contractor to apply a Service rate that is inapplicable to the Ordering Agency.

**5.5.** Reasonable written notice via an Authorization shall be given by the Ordering Agency to the Contractor, at the address provided in Article 16.2, of any material changes proposed in the volume or characteristic of Services required by the Ordering Agency.

**5.6.** To the extent required by the Contractor's Tariffs, the Contractor's Terms and Conditions, or any other terms and conditions set forth in an Authorization, and in accordance therewith, any necessary extension, alteration, relocation, or reinforcement of the Contractor's transmission and/or distribution lines, related special facilities, service arrangements, Energy Management Services (including any rebates to which the Ordering Agency may be entitled), energy audit services, or other Services required or requested by an Ordering Agency shall be provided and, as applicable, billed for, by the Contractor. To the extent available from the Contractor, the Contractor shall provide and, as applicable, bill for such technical assistance on or concerning an Ordering Agency's equipment (such as the inspection or repair of such equipment) as may be requested by such Ordering Agency. The charges for such technical assistance shall be calculated at the time the technical assistance is rendered, in accordance with the Contractor's applicable billing schedule in effect at the time the technical assistance is rendered (except as otherwise mutually agreed upon by the Contractor and the Ordering Agency in writing), and the assistance shall comply with Contractor's Tariffs, Contractor's Terms and Conditions, and any other terms and conditions set forth in an Authorization, as applicable. The Authorization used to obtain and provide the matters, Services, or technical assistance described in this Article 5.6 shall contain information descriptive of the matters, Services, or technical assistance required or requested, including the amount of (or method to determine) any payment to be made by the Ordering Agency to the Contractor for the provision of said matters, Services, or technical assistance.

**5.7.** Any charges for matters or Services referenced in Article 5.6 hereof which are not established by the Contractor's Tariffs and Contractor's Terms and Conditions shall be subject to audit by the Ordering Agency for a period of one (1)

year after the provision of matters or services rendered. Payment for the matters and Services referenced in Article 5.6 thereof shall not be unreasonably withheld or denied.

**5.8.** The requirements of the Disputes clause at FAR 52.233-1 are supplemented to provide that matters involving the interpretation of Contractor's Tariffs are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

#### **ARTICLE 6. BILLS AND BILLING DATA**

**6.1** The Electric Service, Energy Management Service and/or Services Provided Under the Appropriate Regulatory Authority supplied hereunder shall be billed to the Ordering Agency at the address specified in each Authorization. Bills shall be submitted in original only, unless otherwise specified in the Authorization. All bills shall contain such data as is required by the Commission to substantiate the billing and such other reasonable and available data as may be requested by the Ordering Agency, provided that such other data are contained in bills provided to other customers of the Contractor served under the same Service Classification as the Ordering Agency.

#### **ARTICLE 7. PAYMENTS FOR SERVICES**

**7.1.** The Ordering Agency shall affect payment of all bills for Services rendered under this Areawide Contract in accordance with the currently effective payment terms of Contractor's Tariffs, Contractor's Terms and Conditions and any other payment terms and conditions set forth in an Authorization.

**7.2.** The Ordering Agency will make invoice payments for Services not subject to the direct oversight or approval of the Commission in accordance with the provisions of the FAR 52.232-25. The interest rate for late or under payments made pursuant to this clause shall be computed in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

**7.3.** Payments hereunder shall not normally be made in advance of services rendered in accordance with FAR 32.4, unless required by the Contractor's Tariffs or Contractor's Terms and Conditions as approved by the Commission. The applicability of this provision is generally limited to Connection Charge and line extension payments specifically cited and provided for in the Contractor's Tariff.

#### **ARTICLE 8. CONTRACTOR-OWNED METERS**

**8.1.** Metering equipment of standard manufacture suitable to measure all applicable Services supplied by the Contractor hereunder shall be furnished, installed, calibrated, and maintained by the Contractor at its expense. In the event any meter fails to register or registers incorrectly, as determined by the regulations and proceedings of the Commission, billing adjustments shall be made in accordance with such regulations and proceedings.

**8.2.** The Contractor, so far as possible, shall read all meters in accordance with the Contractor's Tariffs and the Commission's regulations.

**8.3.** Meters shall be inspected upon installation in accordance with the Contractor's Tariffs and the Commission's regulations. Subsequent inspection, periodic testing, repair, and replacement of meters shall be done in such place and manner as provided by Contractor's Tariffs and the Commission's regulations. Upon notice that a meter is failing to register correctly, the Contractor shall take steps to effect replacement or repair in accordance with approved regulatory requirements. Ordering Agencies shall have the right to request a meter test in accordance with the procedures prescribed in the Contractor's Tariffs and Commission's regulations. The tests and applicable meter accuracy standards are those set forth in the Contractor's Tariffs and the Commission's regulations. The expense of meter tests shall be borne by the party designated as responsible therefore in the Contractor's Tariffs and the Commission's regulations.

**8.4.** For the purposes of Article 8, references to meters shall apply only to Contractor-owned metering devices installed and maintained by the Contractor in accordance with the Contractor's Tariffs and the Commission's regulations. References to meters under this Article shall not apply to meters that are to be installed by the Contractor at the request of an Ordering Agency, to be owned by the Government as a part of an Authorization for Energy Management Service or other service unregulated by the Commission.



## **ARTICLE 9. EQUIPMENT AND FACILITIES**

**9.1.** Subject to the provisions of Article 5.6 hereof, the responsibility for owning, furnishing, installing, and maintaining all equipment and facilities (other than meters) required to supply service at the delivery point(s) specified in an Authorization shall be determined in accordance with the Contractor's Tariffs and the Contractor's Terms and Conditions. The Ordering Agency shall provide, free of charge to the Contractor, mutually agreeable locations on its premises for the installation of meters and such other equipment furnished and owned by the Contractor and necessary to supply Service hereunder. The Contractor shall, at all times during the Term of this Areawide Contract, operate and maintain at its expense such equipment or facilities as for which it has responsibility in accordance with this Article 9.1. Notwithstanding anything to the contrary in FAR 52.241-5 (Contractor's Facilities (FEB 1995)), to the extent required by the Contractor's Tariffs, Contractor's Terms and Conditions or any other terms and conditions set forth in an Authorization, and in accordance thereof, such equipment and facilities for which the Contractor has responsibility in accordance with this Article 9.1 may be removed or abandoned in place by Contractor. In both cases, the Agency's premises shall be restored by the Contractor at its expense within a reasonable time after discontinuance of service to the Ordering Agency.

**9.2.** All necessary rights-of-way, easements, and such other rights necessary to permit the Contractor to perform under this Areawide Contract shall be obtained and the expense for same borne in accordance with the Contractor's Tariffs, Contractor's Terms and Conditions, the Commission's rules and regulations, or any other terms and conditions set forth in an Authorization.

## **ARTICLE 10. LIABILITY**

**10.1.** Except as otherwise provided in this Areawide Contract, the Contractor's Tariffs, Contractor's Terms and Conditions, or any other terms and conditions set forth in an Authorization, if the Government and/or an Ordering Agency has limited or restricted the Contractor's right of access under Article 11 and thereby interfered with the Contractor's ability to supply service or to correct dangerous situations which are a threat to public safety, the Government shall be responsible for any liability resulting from such restricted or limited access to the extent permitted by law and authorized by appropriations. This Article 10.1 shall not be construed to limit the Government's liability under applicable law.

**10.2.** The Contractor's liability to the Government and to any Ordering Agency for any failure to supply Service, for any interruptions in Service, and for any irregular or defective Service shall be determined in accordance with the Contractor's Tariffs, Contractor's Terms and Conditions, or any other terms and conditions set forth in an Authorization, as applicable.

**10.3.** Except as provided in this Areawide Contract, and in accordance with the Contractor's Tariffs, Contractor's Terms and Conditions, or any other terms and conditions set forth in an Authorization, the Government shall not be liable for damage or injury to any person or property, including death, occasioned solely by the Contractors, its employees' or agents' negligent installation and use, operation or intentional misuse of the Contractor's equipment or facilities.

**10.4.** In accordance with and to extent provided for in the Contractor's Tariffs, Contractor's Terms and Conditions, or any other terms and conditions set forth in an Authorization, neither the Contractor nor its employees, representatives, agents, or independent contractors shall be liable for damage or injury to any person or property, including death, occasioned solely by the negligent installation, use, operation or intentional misuse of Contractor's equipment or facilities by the Government, its employees, agents, representatives, or independent contractors.

**10.5.** The Contractor shall not be liable for incidents arising out of or in any way connected with the violation of or compliance with any local, state or federal environmental law or regulation resulting from pre-existing conditions at a Government job site, release or spill of any pre-existing Hazardous Materials or Hazardous Waste, or the management and disposal of any pre-existing contaminated soils or ground water, hazardous or non-hazardous, removed from the ground or otherwise disturbed as a result of work performed by the Contractor.

**10.6.** To the extent permitted by applicable law and regulations, the Government agrees to accept full responsibility for and bear all costs associated with pre-existing environmental liability. Responsibility for testing, abatement, remediation, and/or disposal of Hazardous Material, including, but not limited to, contaminated soil, contaminated groundwater and contaminated surface water and storm water resulting from contact with pre-existing Hazardous Material, lead paint, asbestos, polychlorinated biphenyls, petroleum, or underground petroleum tanks, shall remain with the Government. Where there is reason to suspect that Hazardous Material is present at the work site, or where Hazardous Material is encountered during the course of work being performed, the Contractor shall stop work, notify

the Contracting Officer and the identified Contracting Officer's Representative (COR) of the relevant Authorization, and request that the Government test the work site for such Hazardous Material and appropriately abate and dispose of such Hazardous Material. Once the work site has been cleared of all Hazardous Material, the Contractor shall resume work in that area.

#### **ARTICLE 11. ACCESS TO PREMISES**

**11.1.** The Contractor and its employees, agents, representatives, and independent contractors, if any, shall have access to the premises served at all reasonable times during the Term of this Areawide Contract and of any Authorization executed under this Areawide Contract and for a reasonable period of time following its expiration or termination, whichever occurs earliest, to perform certain work, which shall include but not be limited to the following: for the purpose of reading meters, making installations, repairs, or removals of the Contractor's equipment, or for any other proper purposes hereunder provided, however, that proper military or other governmental authority may limit or restrict such right of access in any manner considered by such authority to be reasonably necessary or advisable. However, any such limitation or restriction shall preclude the Contractor's ability to complete all work incidents prior to the termination or expiration of this Areawide Contract.

#### **ARTICLE 12. PARTIES OF INTEREST**

**12.1.** This Areawide Contract shall be binding upon and inure to the benefit of the successors, legal representatives, and assignees of the respective parties hereto.

**12.2.** When the Contractor becomes aware that a change in ownership or company name has occurred, the Contractor shall endeavor to notify the Contracting Officer at the address provided in Article 16.1 not later than thirty (30) days after the effectiveness of any such ownership or name change. "Change in ownership" for purposes of this Areawide Contract mean a sale of more than fifty percent of the outstanding voting stock of the Contractor. In the event the Contractor fails to make the notification required by this Article 12.2, the Government cannot guarantee the timely payment of outstanding invoices in accordance with the provisions of Article 7.1; however, the Government shall be responsible for all payments related to the Services provided by the Contractor hereunder.

#### **ARTICLE 13. REPRESENTATIONS AND CERTIFICATIONS**

**13.1.** This Areawide Contract incorporates by reference the representations and certifications made by the Contractor which shall be filed annually electronically at <https://www.sam.gov>.

**13.2.** Contractor represents that the following persons (or their applicable successors or delegates) are currently authorized to negotiate and/or execute (as indicated) on its behalf with the U.S. Government in connection with this Areawide Contract, including any Authorizations executed under this Areawide Contract:

- (a)** Name: Tony Tewelis  
Title Vice President, Transmission and Distribution Operations  
Email: Tony.Tewelis@aps.com  
Phone: 602-371-7878
  
- (b)** Name: Sarah Kist  
Title Senior Director, Engineering and Construction, Transmission and Distribution  
Email: Sarah.Kist@aps.com  
Phone: 602-250-1644
  
- (c)** Name: Ashley Kelly  
Title Manager, Regulatory Compliance  
Email: Ashley.Kelly@aps.com  
Phone: 602-371-7182

Contractor reserves the right to amend the above list of persons at any time by delivering written notice to the Government at the address provided in Article 16.1.

**ARTICLE 14. SUPPLEMENTAL CLAUSES****14.1. 52.252-2 Clauses** Incorporated by Reference. (FEB 1998)

This Areawide Contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at <https://www.acquisition.gov>

FAR/GSAR REF	Federal Acquisition Regulation
1. 52.202-1	DEFINITIONS (JUN 2020)
2. 52.203-3	GRATUITIES (APR 1984)
3. 52.203-5	COVENANT AGAINST CONTINGENT FEES (MAY 2014)
4. 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUN 2020)
5. 52.203-7	ANTI-KICKBACK PROCEDURES (JUN 2020)
6. 52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)
7. 52.203-11	CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)
8. 52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020)
9. 52.204-24	REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)
10. 52.204-25	PROHIBITION OF CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES AND EQUIPMENT (NOV 2021)
11. 52.204-27	PROHIBITION ON A BYTEDANCE COVERED APPLICATION (JUN 2023)
12. 52.212-3	OFFEROR REPRESENTATIONS AND CERTIFICATIONS – COMMERCIAL ITEMS (NOV 2021)
13. 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018)
14. 52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (NOV 2021)
15. 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APR 2015)
16. 52.222-26	EQUAL OPPORTUNITY (SEP 2016)
17. 52.222-35	EQUAL OPPORTUNITY FOR VETERANS (JUN 2020)
18. 52.222-36	EQUAL OPPORTUNITIES FOR WORKERS WITH DISABILITIES (JUN 2020)
19. 52.222-50	COMBATING TRAFFICKING IN PERSONS (NOV 2021)
20. 52.232-23	ASSIGNMENT OF CLAIMS (MAY 2014)
21. 52.232-25	PROMPT PAYMENT (JAN 2017)
22. 52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER- SYSTEM FOR AWARD MANAGEMENT (OCT 2018)
23. 52.232-34	PAYMENT BY ELECTRONIC FUNDS TRANSFER-OTHER THAN SYSTEM FOR AWARD MANAGEMENT (JUL 2013)
24. 52.233-1	DISPUTES (MAY 2014)
25. 52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)
26. 52.237-2	PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)
27. 52.241-2	ORDER OF PRECEDENCE—UTILITIES (FEB 1995)
28. 52.241-8	CHANGE IN RATES OR TERMS AND CONDITIONS OF SERVICE FOR UNREGULATED SERVICES (FEB 1995)
29. 52.242-13	BANKRUPTCY (JULY 1995)
30. 52.243-1	CHANGES—FIXED PRICE (AUG 1987)
31. 52.244-5	COMPETITION IN SUBCONTRACTING (DEC 1996)
32. 52.249-2	TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (APR 2012)
33. 552.241-70	AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR OR QUARTER (AUG 2010)
34. 552.241-71	DISPUTES (UTILITY CONTRACTS) (AUG 2010)

#### 14.2 Unregulated Services.

Pursuant to this Areawide Contract, the Contractor may provide energy related services that are not subject to rate and tariff regulations by the Commissions under a pre-approved alternative (FAR 52.241-8) that demonstrates the Contractor will provide these services under terms and conditions that are competitive and otherwise in the best interests of the Ordering Agency. If, as demonstrated by the Ordering Agency, the conditions for use of this pre-approved alternative cannot be satisfied, then the Ordering Agency should consider the requirement of the Competition in Contracting Act of 1984 and the extent to which a competitive acquisition process is required to select and award a contract for these unregulated services. If an Authorization under this Areawide Contract is utilized, the prices and terms and conditions for unregulated services offered by the Contractor shall be negotiated subject to the requirements of FAR 41.5, subject to the general requirements of FAR 52.241-8.

#### 14.3 Repeal of Clauses During Term of Areawide Contract.

If, during the Term of this Areawide Contract, any of the clauses contained in this Article are repealed, revoked, or dissolved by the Government, then such clauses shall no longer be part of this Areawide Contract as of the date of such repeal, revocation, or dissolution. The elimination of these clauses by reason of such repeal, revocation, or dissolution shall not affect the continuing validity and effectiveness of the remainder of this Areawide Contract or other clauses referenced in this Article. The parties' conduct thereafter shall be modified accordingly and reflect the repeal, revocation, or dissolution as related to their respective rights and obligations hereunder.

#### 14.4 Clauses Incorporated in Full Text.

As prescribed in 4.2105(a), insert the following provision:

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2021)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at 52.204-26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Products or Commercial Services. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at 52.204-26, or in paragraph (v)(2)(ii) of the provision at 52.212-3.

(a) *Definitions.* As used in this provision—

*Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component* have the meanings provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(d) *Representation.* The Offeror represents that—

(1) It will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) *Disclosures.* (1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

### **52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment**

As prescribed in 4.2105(b), insert the following clause:

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2021)

(a) *Definitions.* As used in this clause—

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (*e.g.*, connecting cell phones/towers to the core telephone network). Backhaul can be wireless (*e.g.*, microwave) or wired (*e.g.*, fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (*e.g.*, connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (*e.g.*, voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.* (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement. (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any

additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

#### **14.5 State Taxes.**

The contract price excludes all state and local taxes levied on or measured by the Areawide Contract or sales price of the Services or completed supplies furnished under this Areawide Contract. The Government agrees either to pay the amount of the state or local taxes to the Contractor or provide evidence necessary to sustain an exemption from such taxes.

### **ARTICLE 15. SMALL BUSINESS SUBCONTRACTING PLAN**

**15.1.** Attached hereto and made a part hereof by reference is a SUBCONTRACTING PLAN FOR SMALL BUSINESS CONCERNS, SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY & ECONOMICALLY DISADVANTAGED INDIVIDUALS, HUB ZONE BUSINESS CONCERNS, WOMAN OWNED SMALL BUSINESS CONCERNS, VETERAN-OWNED SMALL BUSINESSES CONCERNS AND DISABLED VETERAN-OWNED BUSINESSES negotiated between the Contractor and the Government, which is applicable on a company wide basis pursuant to the requirements of Section 211 of P.L. 95-507, as amended (15 U.S.C. 637(d)). The Contractor expressly understands that this subcontracting plan is an annual plan and hereby agrees to submit a new subcontracting plan by November 30<sup>th</sup> of each year during the Term of this Areawide Contract.

**15.2.** Information and announcements concerning current developments in the GSA Small Business Subcontracting Program are available on the GSA Clean Energy Division web site accessible via <http://www.gsa.gov/energy>.

### **ARTICLE 16. NOTICES**

**16.1.** Unless specifically provided otherwise, all notices required to be provided to the Government under this Areawide Contract shall be mailed to: U. S. General Services Administration, PBS, Office of Facilities, Clean Energy Division (PMPA), 1800 F Street, NW, Washington, DC 20405 or via email at [energy@gsa.gov](mailto:energy@gsa.gov).

**16.2.** All inquiries and notices to the Contractor regarding this Areawide Contract shall be mailed to: Arizona Public Service Company, 400 North Fifth Street, Phoenix, Arizona 85004; Attn: Kelly Spence Consultant, Government Program Management Office, or via email to [Kelly.Spence@aps.com](mailto:Kelly.Spence@aps.com) or to such other person as the Contractor may hereafter designate in writing. A copy of any notices required under the Areawide Contract shall be mailed to: Arizona Public Service Company, 400 North Fifth Street, Phoenix, Arizona 85004, Attn: Law Department - General Counsel.

**16.3.** The Ordering Agency shall provide GSA with a copy of all fully executed Exhibits including any applicable attachments at the address provided in Article 16.1.

### **ARTICLE 17. REPORTING**

**17.1.** The Contractor shall provide, as prescribed and directed by the Contracting Officer, an annual report on Subcontracting Plan Achievements, in accordance with the approved subcontracting plan for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals by October 30<sup>th</sup> of each year during the Term of this Areawide Contract. The report shall be submitted electronically utilizing the Small Business Administration's Electronic Subcontracting Reporting System. The website address of system can be found at <http://www.esrs.gov>.

### **ARTICLE 18. UTILITY ENERGY SERVICE CONTRACTS**

**18.1.** Performance Assurance: Energy Conservation Measures (ECMs) will not normally be included within a project unless a net overall energy usage or cost reduction can be demonstrated and verified. When ECM construction is complete, the commissioning process provides data for this verification. UESCs that include a savings guarantee will require additional measurement and verification (M&V) activities during the performance period. Verification standards for energy projects are established in the M&V Guidelines: Measurement and Verification for Performance Based



Contracts, published by the Department of Energy's Federal Energy Management Program (FEMP). All UESCs, regardless of whether they include a savings guarantee, will include a Performance Assurance Plan with key performance indicators identified.

**18.2.** Unless otherwise provided by law, UESC performance assurances or guarantees of the savings generated by the ECMs must equal or exceed the total task order value.

**18.3. Subcontracting:** The Contractor shall have the right to enter into a subcontract with a third-party Energy Service Company ("ESCO"), which shall include unregulated affiliates of Contractor, to perform the project development and project management functions under the Authorization. Contractor or any such ESCO designated by Contractor may perform any or the entire EMS requested by an Ordering Agency through subcontractors, (each an "EMS Subcontractor"). EMS Subcontractors shall be competitively selected in accordance with FAR 52.244-5 (EMS Subcontractor selection shall be based on cost, experience, past performance and other such factors as Contractor and the Ordering Agency may mutually deem appropriate and reasonably related to the Government's minimum requirements. Upon request by the Ordering Agency, the Contractor shall make available to the Contracting Officer all documents related to the selection of an EMS Subcontractor. In no event shall the service be provided by an EMS Subcontractors listed as excluded from Federal Procurement Programs maintained by GSA pursuant to FAR 9.404.

**18.4.** For all Authorizations involving ECMs, it is desirable to have a warranty clause that addresses the specific needs and requirements of the work being performed and equipment that is to be provided by the Contractor; however, in the absence of a warranty clause in the Authorization, the following language will serve as the default clause:

The Contractor shall pass through to the Ordering Agency all warranties on equipment installed or provided by it or its subcontractors on Government property with the following representation:

CONTRACTOR ACKNOWLEDGES THAT THE UNITED STATES OF AMERICA WILL OWN OR LEASE THE EQUIPMENT AND/OR MATERIALS BEING INSTALLED OR SUPPLIED HEREUNDER, AND, ACCORDINGLY, AGREES THAT ALL WARRANTIES SET FORTH HEREIN, OR OTHERWISE PROVIDED BY LAW IN FAVOR OF THE COMPANY SHALL INURE ALSO TO THE BENEFIT OF THE UNITED STATES AND THAT ALL CLAIMS ARISING FROM ANY BREACH OF SUCH WARRANTIES OR AS A RESULT OF DEFECTS IN OR REPAIRS TO SUCH EQUIPMENT OR SUPPLIES MAY BE ASSERTED AGAINST CONTRACTOR OR MANUFACTURER DIRECTLY BY THE UNITED STATES OF AMERICA.

**18.5.** The Ordering Agency shall provide GSA with copies of fully executed Exhibit "B" Authorizations for any EMS resulting from approved energy audits, including any applicable attachments, at the address provided in Article 16.1. The contractor shall provide financial schedules at interim delivery points as required by the ordering agency. Financial schedules are based upon the eProject Builder system and final financial schedules shall be submitted through the eProject Builder system <https://eprojectbuilder.lbl.gov>.

**18.6.** Contractor's Responsibilities under this Areawide Contract:

- (a) The Contractor shall not provide EMS to Federal facilities under this Areawide Agreement unless the facility is located within a geographic area that the Contractor is authorized to provide services.
- (b) The work that is to be performed under the Authorization for EMS shall be limited to work resulting in a direct reduction in energy or water usage or cost (see Article 1.1) and any modifications or repairs that are necessary as a direct result of the installation of the ECM.

**18.7.** Guaranteed Savings and Scoring of Utility Energy Service Contracts (UESCs) by the Ordering Agency(ies):

UESC's that meet the definition of "Energy Management Service" ("EMS") prescribed in Article 1.1 of this Areawide Contract, and which follow the guidance prescribed in OMB Memoranda M-12-21 and M-98-13, may be scored for budgetary purposes by the Ordering Agency(ies) on an annual basis if the UESC requires:

- (a) Energy savings performance assurances or guarantees of the savings to be generated by improvements, which must cover the full cost of the Federal investment for the improvements;
- (b) Measurement and verification (M&V) of savings through commissioning and retro-commissioning; and
- (c) Competition or an alternatives analysis as part of the selection process prior to entering into a UESC

**18.8.** Performance Verification Plan: In order to assure the necessary fiscal responsibility consistent with sound program management, alternatively financed UESCs should include a plan for continued action during the contract to assure continued accomplishment of expected performance (this is referred to as a Performance Assurance or Performance Verification Plan). The level of performance assurance and its associated costs should be worth the level

of certainty of cost savings that the Ordering Agency reasonably deems to be necessary. Each alternatively financed UESC should have a performance assurance plan to accomplish this. Such plans should provide for the separate evaluation of each energy conservation measure and combination of measures in order to identify the appropriate level of needed performance assurance activity based on the technical complexity, potential savings magnitude, and specific situation. (See Overview of the Measurement and Verification for Federal Energy Projects Guidelines Version 2.2 or FEMP Fact Sheet - Performance Assurance for Multi-Year Contracts Under the Utility Incentive Program for further guidance.) Inclusion of and compliance with the performance assurance plan in the specific project task order satisfies the requirements of Contractor under section 18.1 and 18.7.

#### **ARTICLE 19. MISCELLANEOUS**

**19.1. Contract Administration:** The Ordering Agency shall assist in the day-to-day administration of the Service being provided to it under an Authorization.

**19.2. Anti-Deficiency:** Unless otherwise authorized by Public Law or Federal Regulation, nothing contained herein shall be construed as binding the Government to expend, in any one fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the matter of any Authorization executed in accordance with this Areawide Contract or to involve the Government in an obligation for the future expenditure of monies before an appropriation is made (Anti-Deficiency Act, 31 U.S.C. 1341.A.1).

**19.3. Obligation to Serve:** Nothing contained in this Areawide Contract shall obligate the Contractor to take any action which it may consider to be detrimental to its obligations as a public utility.

**19.4 Term of Authorizations:** It is recognized that during the Term of this Areawide Contract, situations and/or requirements may arise where it may be desirable that the term of service to an Ordering Agency's facility extend beyond the Term of this Areawide Contract. In such event, the particular Authorization involved may specify a term extending beyond the Term of this Areawide Contract, provided that it is within the contracting authority of the Ordering Agency and appropriate termination liability provisions have been negotiated between the Contractor and Ordering Agency to address unamortized balances for connection charges and/or financing charges associated with EMS projects.

**19.5. Indemnification:** Any indemnification language contained in standard form agreements executed between the Ordering Agency and the Contractor shall be binding upon the Federal Government only to the extent authorized by law.

**19.6. Authorization Procedure:** The execution of an Authorization by Contractor and an Ordering Agency shall not supersede a previously executed Authorization addressing the same service unless specifically stated. Allowable terms of Authorizations shall be consistent with the guidance and policy set forth in Article 2.2 of this Areawide contract.

**19.7. Construction Wage Rate Requirements:** Since this Areawide Contract does not involve the regulated utility company performing on a Federally funded or assisted contract for the construction, alteration, or repair of a public work and/or public facility, the Construction Wage Rate Requirements (previously known as the Davis Bacon Act) do not apply to the work to be performed by the regulated utility company in connection with the provision of regulated utility services. However, if a determination by the Department of Labor (DOL) differs, financial liability will be determined in accordance with applicable law.



**CERTIFICATE**

I, Diane Wood, certify that I am Corporate Secretary of Arizona Public Service Company, named as Contractor in the negotiated Areawide Public Utility Contract No. 47PA0724D0008 that Tony Tewelis, who signed said Areawide Public Utility Contract on behalf of the Contractor, was then Vice President Transmission and Distribution Operations of Arizona Public Service Company of said Contractor; and that said Areawide Public Utility Contract was duly signed for and on behalf of said Contractor and is within the scope of its corporate powers.

/s/  \_\_\_\_\_

**EXHIBIT "A"**

**Arizona Public Service Company**  
AUTHORIZATION FOR ELECTRIC SERVICE, CHANGE IN ELECTRIC SERVICE,  
OR DISCONNECTION AND/OR TERMINATION OF ELECTRIC SERVICE UNDER  
**AREAWIDE CONTRACT NO. 47PA0724D0008**

Ordering Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Pursuant to Areawide Contract No. 47PA0724D0008 between the Contractor and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered or modified as hereinafter stated. Areawide Contract Articles 2 and 4 shall be followed for the initiation of service under this contract.

PREMISES TO BE SERVED: \_\_\_\_\_

SERVICE ADDRESS: \_\_\_\_\_

NATURE OF SERVICE:  Connect,  Change,  Disconnect,  Continue Service,  
 Line Extension, Alteration, Relocation, or Reinforcement,  Special Facilities

OTHER TERMS AND CONDITIONS:

\_\_\_\_\_ Attach any other relevant terms and conditions under which service will be provided.

CONNECTION: If this exhibit is used for connection of utility service, the connection charges established in Arizona Public Service Company tariffs shall apply. If "Connect" is selected above, the estimated connection charges shall be included in the executed Exhibit.

Estimated Connection Charges \$ \_\_\_\_\_.

POINT OF DELIVERY: \_\_\_\_\_

TERM OF SERVICE: From \_\_\_\_\_ through \_\_\_\_\_.

SERVICE HEREUNDER SHALL BE UNDER RATE SCHEDULE NO. \_\_\_\_\_\*, Hereafter amended or modified by the regulatory body having jurisdiction. (See Article 5 of this contract.)

ESTIMATED ANNUAL ENERGY USAGE: \_\_\_\_\_ KWH, ESTIMATED DEMAND: \_\_\_\_\_ KW

ESTIMATED ANNUAL SERVICE COST: \$ \_\_\_\_\_

ESTIMATED CONNECTION/SPECIAL FACILITIES CHARGE: \$ \_\_\_\_\_ (if applicable) \*\*

ACCOUNTING AND APPROPRIATION DATA FOR SERVICE: \_\_\_\_\_

FOR CONNECTION/SPECIAL FACILITIES CHARGE: \_\_\_\_\_

**CLAUSES INCORPORATED BY REFERENCE (Check applicable clauses):**

- 1) \_\_\_\_\_ *52.211-10 Commencement, Prosecution and Completion of Work (APR 1984)*
- 2) \_\_\_\_\_ *52.236-5 Material and Workmanship (APR 1984)*
- 3) \_\_\_\_\_ *52.241-3 Scope and Duration of Contract (FEB 1995)*
- 4) \_\_\_\_\_ *52.241-5 Contractor's Facilities (FEB 1995)*
- 5) \_\_\_\_\_ *52.241-6 Service Provisions (FEB 1995)*
- 6) \_\_\_\_\_ *52.241-11 Multiple Service Locations (FEB 1995)*
- 7) \_\_\_\_\_ *52.249- Default (\_\_\_\_\_) (Specify appropriate Clause)*
- 8) \_\_\_\_\_ *52.241-12 Nonrefundable, Nonrecurring Service charge (FEB 1995)*

BILLS WILL BE RENDERED TO THE ORDERING AGENCY FOR PAYMENT AT THE FOLLOWING ADDRESS:  
\_\_\_\_\_ in \_\_\_\_\_ copies.

The foregoing shall be effective upon the return of the fully executed original Authorization by the Contractor to the ordering Agency.

**Exhibit A (Cont'd)**

ACCEPTED:

\_\_\_\_\_  
(Ordering Agency)

**Arizona Public Service Company**  
(Contractor)

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\* Include a reference to the applicable rate schedule and attach a copy of such schedule.

\*\* If necessary, attach and make part hereof supplemental agreements or sheets that cover required connection or extension charges and special facilities or service arrangements. (See Article 5 of this Contract for instructions.)

**NOTE:** A fully executed copy of this Authorization shall be transmitted by the Ordering Agency to U. S. General Services Administration, PBS, Office of Facilities Management, Clean Energy Division, 1800 F Street, NW, Washington, DC 20405 or via email at [energy@gsa.gov](mailto:energy@gsa.gov)

**EXHIBIT "B"**

**Arizona Public Service Company**  
 AUTHORIZATION FOR ENERGY MANAGEMENT SERVICE, OR DISCONNECTION OF ENERGY MANAGEMENT SERVICE  
**CONTRACT NO. 47PA0724D0008**

Ordering Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Pursuant to Contract No. 47PA0724D0008 between the Contractor and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered and subject to all the provisions thereof. This Authorization for Energy Management Services (EMS) including any attachments listed below and any FAR provisions checked below and incorporated herein by reference, shall together with the referenced Areawide Contract form one single integrated agreement.

PREMISES TO BE SERVED: \_\_\_\_\_

SERVICE ADDRESS: \_\_\_\_\_

- NATURE OF SERVICE:  Preliminary Energy Audit  Comprehensive Energy Audit  
 EMS Engineering and Design  EMS Installation  
 Demand Side Management (DSM) Project  Other (See Remarks Below)

IF ANY REGULATED SERVICES ARE PROVIDED UNDER THIS AUTHORIZATION, SUCH SERVICES SHALL BE SUBJECT TO THE AUTHORITY OF THE Arizona Corporation Commission.

POINT OF DELIVERY: \_\_\_\_\_

PROJECT COST: \_\_\_\_\_

ACCOUNTING AND APPROPRIATION DATA: \_\_\_\_\_

**List of Attachments:**

- |   |   |   |   |
|---|---|---|---|
| <input type="radio"/> General Conditions  | <input type="radio"/> Payment Provisions    | <input type="radio"/> Special Requirements  | <input type="radio"/> Economic Analysis     |
| <input type="radio"/> Facility/Site Plans | <input type="radio"/> Historical Data       | <input type="radio"/> Utility Usage History | <input type="radio"/> ECP Feasibility Study |
| <input type="radio"/> Design Drawings     | <input type="radio"/> Design Specifications | <input type="radio"/> Certifications        | <input type="radio"/> Commission Schedules  |
| <input type="radio"/> Other:              |   |   |   |

**CLAUSES INCORPORATED BY REFERENCE AND MISCELLANEOUS PROVISIONS (Check applicable clauses):**

- |           |           |   |
|-----------|-----------|---|
| 1) _____  | 52.204-9  | Personal Identity Verification of Contractor Personnel (JAN 2011)   |
| 2) _____  | 52.215-2  | Audit and Records – Negotiation (JUN 2020)  |
| 3) _____  | 52.215-10 | Price Reduction for Defective Cost or Pricing Data (AUG 2011)   |
| 4) _____  | 52.215-12 | Subcontractor Certified Cost or Pricing Data ((JUN 2020)  |
| 5) _____  | 52.215-14 | Integrity of Unit Prices (NOV 2021)   |
| 6) _____  | 52.215-20 | Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data (NOV 2021)                 |
| 7) _____  | 52.222-54 | Employment Eligibility Verification (MAY 2022)  |
| 8) _____  | 52.223-4  | Recovered Material Certification (MAY 2008)   |
| 9) _____  | 52.223-9  | Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008)                        |
| 10) _____ | 52.223-15 | Energy Efficiency in Energy-Consuming Products (MAY 2020)   |
| 11) _____ | 52.223-17 | Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts (AUG 2018)                |
| 12) _____ | 52.232-25 | Prompt Payment (JAN 2017)   |
| 13) _____ | 52.241-7  | Change in Rates or Terms and Conditions of Service for Regulated Services (FEB 1995)<br>Use Full Text of Clause |
| 14) _____ | 52.244-5  | Competition in Subcontracting (DEC 1996)  |
| 15) _____ | 52.249-8  | Default (Fixed Price Supply or Service) (APR 1984)  |

**Exhibit B (Cont'd)**

In addition, the Contracting Officer negotiating the terms and conditions under this Authorization may supplement, with written agreement from the Contractor, the above clauses with clauses of the appropriate type of contract.

REMARKS:

ACCEPTED:

\_\_\_\_\_  
(Ordering Agency)

**Arizona Public Service Company**  
(Contractor)

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTE:** A fully executed copy of this Authorization shall be transmitted by the ordering Agency to U. S. General Services Administration, Public Building Service, Office of Facilities Management, Clean Energy Division, 1800 F Street, NW, Washington, DC 20405 or via email at [energy@gsa.gov](mailto:energy@gsa.gov)



**EXHIBIT "C"**

**Arizona Public Service Company**

AUTHORIZATION FOR THE PROVISION OF SERVICES PROVIDED UNDER THE APPROPRIATE REGULATORY AUTHORITY  
\_\_\_\_\_ (insert authority)

**CONTRACT NO. 47PA0724D0008**

Ordering Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Pursuant to Areawide Contract No. 47PA0724D0008 between Arizona Public Service Company ("Contractor") and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered or modified as hereinafter stated. Areawide Contract Articles 2 and 4 shall be followed by the Ordering Agency in initiating service under this contract as described below.

PREMISES TO BE SERVED: \_\_\_\_\_

SERVICE ADDRESS: \_\_\_\_\_

NATURE OF SERVICE: \_\_\_\_\_ [add description of the specific service requested by the Ordering Agency. For example: Interconnection of the Ordering Agency's renewable energy project.]

OTHER TERMS AND CONDITIONS:

[Describe or attach description]

[Attached as Exhibit C.1 are, if applicable, Contractor's terms and conditions for the specific service identified above, which may include modifications that have been made by Contractor for the Ordering Agency with the approval of the (insert Appropriate Regulatory Authority) \_\_\_\_\_]

TERM OF SERVICE: From \_\_\_\_\_ through \_\_\_\_\_

BILLS WILL BE RENDERED TO THE ORDERING AGENCY FOR PAYMENT AT THE FOLLOWING ADDRESS:

\_\_\_\_\_ in \_\_\_\_\_ copies.

The foregoing shall be effective upon the return of the fully executed original Authorization by the Contractor to the ordering Agency.

ACCEPTED:

\_\_\_\_\_  
(Ordering Agency)

**Arizona Public Service Company**  
(Contractor)

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTE:** A fully executed copy of this Authorization shall be transmitted by the ordering Agency to U. S. General Services Administration, PBS, Office of Facilities Management, Clean Energy Division, 1800 F Street, NW, Washington, DC 20405 or via email at [energy@gsa.gov](mailto:energy@gsa.gov)