

Areawide Public Utility Contract

For

Electric Services Provided under the  
Appropriate Regulatory Authority

Contract No. GS-00P-17-BSD-1230

between the

**United States of America**

and

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

Franchised areas of Central New Mexico, including the City of Albuquerque

Negotiated Areawide Contract  
**No. GS-00P-17-BSD-1230**  
between the  
**United States of America**  
And  
**PUBLIC SERVICE COMPANY OF NEW MEXICO**  
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NEGOTIATED AREAWIDE CONTRACT

No. **GS-00P-17-BSD-1230**

BETWEEN THE

**UNITED STATES OF AMERICA**

AND

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

THIS AREAWIDE CONTRACT FOR **Electric Utility Services Provided Under The Appropriate Regulatory Authority** is executed this 14 day of October, 2016, 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, PUBLIC SERVICE COMPANY OF NEW MEXICO, a corporation organized and existing under the laws of the State of New Mexico, and having its principal office and place of business at Alvarado Square, Albuquerque, New Mexico 87158 (hereinafter referred to as the "**Utility**"):

**WHEREAS**, the Utility is a public utility company that is regulated by the New Mexico Public Regulation Commission;

**WHEREAS**, the Utility now has on file with the New Mexico Public Regulation Commission all of its effective tariffs, rate schedules, riders, rules and regulatory terms and conditions of electric utility 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 Utility Services Provided Under the Appropriate Regulatory Authority** at each Federal facility where the value of the Services provided is expected to exceed \$150,000 annually; 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 services from the Utility under the Areawide Public Utilities Contract No. GS-OOP-05-BSD-0355 that expired on August 16, 2015; and

**WHEREAS**, the Utility and the Government mutually desire that this Areawide Contract be used by the agencies of the Government in obtaining electric utility services provided under the Appropriate Regulatory Authority from the Utility; 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) "**Areawide Contract**" means this master contract entered into between the Government and the Utility to cover the electric utility service purchases by all Federal agencies in the franchised certificated electric utility service territory from the Utility for a period not to exceed ten (10) years.

(b) "**Appropriate Regulatory Authority**" and "**Commission**" each mean the New Mexico Public Regulation Commission.

(c) "**Affiliate**" means any other person that, directly or indirectly, controls, is controlled by, or is under common control with a party and any person in which a party has an ownership interest and to which the party or an Affiliate of the party provides. In this context "control" means the power to direct the management or policies directly or indirectly whether through the ownership of voting securities, by contract, or otherwise.

(d) "**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 4800.2E on the General Services Administration website.

(e) "**Ordering Agency**" means any Agency that enters into a bilaterally executed Authorization for procurement of **Electric Utility Services Provided Under The Appropriate Regulatory Authority** under this Areawide Contract.

(f) "**Authorization**" means the order form set forth in **Exhibit "A"** (which **Exhibit "A"** is annexed hereto and incorporated herein) used to acquire electric utility services under this Areawide Contract.

(g) "**Termination Authorization**" means the order form set forth in **Exhibit "A"** used to discontinue or disconnect electric utility services under this Areawide Contract.

(h) "**Service(s)**" means any **electric utility services provided under the Appropriate Regulatory Authority** that are generally available from the Utility pursuant to the Utility's Tariffs.

(i) "**Electric Utility Service**" means regulated electric commodities, transmission, and distribution services.

(j) "**Utility's Tariffs**" means the Commission's utility service tariffs, and includes rate schedules, riders, rules, regulations, and regulated terms and conditions of service as may be modified, amended or supplemented by the Utility from time to time and, approved by the Commission.

(k) "**Utility's Terms and Conditions**" for this Areawide Contract, means the generic terms, conditions, policies, procedures, payment terms established by the Utility for those utility services that are provided pursuant to this Contract, and as such, may be modified, amended, or supplemented by the Utility from time to time, that are under the Commission's jurisdiction, but are not required to be approved by the Commission and/or not specifically subject to Commission approval before they take effect.

(l) "**Connection Charge**" means a charge by the Utility for facilities on the Utility's side of the delivery point which facilities (1) are required to make connections with the nearest point of supply and (2) are in accordance with the Utility's Tariffs and the Commission's rules and regulations and are installed, owned, maintained and operated by the Utility.

(m) "**Class of Service**" or "**Service Classification**" means those categories of service established in the Utility's Tariff as filed with the Commission.

(n) "**Extension Fee**" means a charge by the Utility for facilities on the Utility's side of the delivery point which facilities (1) are required to make connections with the nearest point of supply and (2) are, in accordance with the Terms of Service, installed, owned, maintained and operated by the Utility.

(o) "**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. Sections 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. Sections 1251 et seq.);
- iii. those substances defined as "hazardous materials" pursuant to Section 103 of the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801 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. Sections 2601 et seq.);
- v. those substances defined as "contaminants" pursuant to Section 1401 of the Safe Drinking Water Act (42 U.S.C. Sections 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. Sections 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. Sections 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. Section 2014 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. Sections 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. Section 651 et seq.);
- xi. those substances defined as "hazardous air pollutants" pursuant to Section 112(a)(6), or "regulated substance" pursuant to Section 112(a)(2)(B) of the Clean Air Act (42 U.S.C. Sections 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. Sections 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 federal laws or federal regulations.

(p) "**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. Section 6901 et seq.), and those other hazardous wastes defined in any regulations promulgated pursuant to any environmental Law.

1.2. When a contract clause in this Areawide Contract uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the Areawide Contract was executed, unless (a) the Government and the Utility have agreed to a different definition that is set forth in this Areawide Contract or (b) the part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning.

## ARTICLE 2. SCOPE AND DURATION OF CONTRACT.

2.1. This Areawide Contract shall be in effect on and after 14 day of October, 2016 ("**Effective Date**"), and shall continue for a period of ten (10) years ("**Term**"), provided, however, that neither the stated duration of this Areawide Contract nor any other termination of it, in whole or in part, shall be construed to affect any obligation for any payment, charge, rate, or other matter that may be imposed pursuant to the Utility's Tariffs, rates, rules, regulations, riders, practices, or terms and conditions of Service as may be modified, amended, or supplemented by the Utility and approved from time to time by the Commission.

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. Any Authorization negotiated and executed during the Term of this Areawide Contract or its predecessor Contract No. GS-OOP-05-BSD-0355 shall be valid during the Term of this Areawide Contract, provided the term of the individual Authorization does not extend beyond the end date of the Term of this Areawide Contract.

2.3. The provisions of this Areawide Contract shall not apply to the Utility's Service to any particular Ordering Agency until both the Ordering Agency and the Utility execute a written Authorization for **Electric Utility Services Provided Under The Appropriate Regulatory Authority**. Upon bilateral execution of an Authorization, the Utility agrees to furnish to the Ordering Agency, and the Ordering Agency agrees to purchase from the Utility, the above noted utility services for the installation(s) or facilities named in the Authorization pursuant to the terms of this Areawide Contract.

2.4. Nothing in this Areawide Contract shall be construed as precluding the Ordering Agency and the Utility 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 electric utility services that are offered by the Utility, as further described in 40 U.S.C. Section 591, to the extent it is applicable, (quoted here in relevant part): "A department, agency, or instrumentality of the Federal Government may not use amounts appropriated or made available by any law to purchase electricity in a manner inconsistent with State law governing the provision of electric utility service..."

## ARTICLE 3. EXISTING CONTRACTS.

3.1. The parties agree that an Agency currently acquiring Service from the Utility under a separate written contract may continue to do so until that contract expires or until such time as the Agency and the Utility 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 Utility.

#### 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 Utility. Upon the request of the Ordering Agency, the Utility shall endeavor to provide reasonable assistance to the Ordering Agency in selecting the service classification which may be most favorable and appropriate to the Ordering Agency as required by Commission rules and regulations. Upon execution of an Authorization by both the Utility and the Ordering Agency, the date of initiation or change in Service shall be effective as of the date specified in the Authorization. An executed copy of the Authorization shall be transmitted by the Ordering Agency to GSA at the address provided in Section 15.1.

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 Utility's Tariffs, the Utility'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 Utility 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 Utility shall be in accordance with the terms of this Areawide Contract, applicable Commission rules and regulations and the Utility's Tariffs.

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 Contract terms and conditions in effect at the time of award.

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

5.1. A complete listing of all of the Utility's Tariffs, as amended, supplemented, modified and revised from time to time, is available to the Government and any Ordering Agency electronically at the Utility's website accessible via <https://www.pnm.com/regulatory> and/or at the Commission's website at <http://www.nmprc.state.nm.us/consumer-relations/company-directory/electric/pnm/index.html>, as such websites may be updated from time to time.

5.2. Subject to the provisions of Article 2.3, all **Electric Utility Services Provided Under The Appropriate Regulatory Authority** purchased under this Areawide Contract, as well as any other action under this Areawide Contract, shall be in accordance with, and subject to, the Utility's Tariffs and Commission rules and regulations, except to the extent that same are preempted by Federal law. Throughout the Term of the Areawide Contract, the Government shall have full access to the Utility's currently effective Tariffs. In the event the Utility's Tariffs become inaccessible via the internet or the Ordering Agency does not have access to the internet, the Utility agrees to provide newly effective or amended Tariffs in accordance with the Utility's Tariff distribution practices, policies and procedures applicable to all customers.

5.3. If, during the Term of this Areawide Contract, the Commission approves a change in rates for services specified in Authorizations in effect hereunder, the Utility 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 rates are 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 Utility hereby represents and warrants to the Government that the Service rates available to any Ordering Agency 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 Utility to apply service rates that are inapplicable to the Ordering Agency.

5.5. Reasonable written notice via an Authorization shall be given by the Ordering Agency to the Utility, at the address provided in Section 15.2, of any material changes proposed in the volume or characteristic of utility services required by the Ordering Agency.

5.6. To the extent required by the Utility's Tariffs, the Commission's rules and regulations, or the Utility's policies and practices applicable to all customers, and in accordance therewith, any necessary extension, alteration, relocation, or reinforcement of the Utility's transmission or distribution lines, related special facilities, Service arrangements, (including any rebates to which the Ordering Agency may be entitled), or other Services required or requested by an Ordering Agency shall be provided and, as applicable, billed for, by the Utility. To the extent available from the Utility, the Utility 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, as mutually agreed upon by the Utility and the Agency, and shall comply with Utility's Tariffs, if applicable. The Authorization or any other agreement 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 Utility 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 Utility's Tariffs shall be subject to audit by the Ordering Agency prior to payment provided, however, that notwithstanding such right to audit, payment for the matters and Services referenced in Article 5.6 thereof shall not be unreasonably withheld or denied. The Utility further warrants and represents to the Government that charges for the matters or Services referenced in Article 5.6 hereof will not exceed the charges billed to other customers of the Utility served under the same Service Classification for like matters or Services provided under similar circumstances.

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

**6.1** The **Electric Utility 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 Utility served under the same Service Classification as the Ordering Agency.

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

**7.1.** Payments hereunder shall not be paid in advance of Services rendered. The Ordering Agency shall effect payment of all bills for regulated Services rendered under this Areawide Contract in accordance with the terms of the Utility's Tariff. All bills are rendered as "net" bills which will be subject to a late payment charged in accordance with the Utility's Tariffs and the Commission's rules and regulations when not paid within twenty (20) days following the mailing of the bill. Changes in the Utility's Tariff provisions for the payment of bills shall supersede the provisions of this paragraph to the extent of the applicability of such changes.

**7.2.** The Ordering Agency will make invoice payments for Services not subject to the direct oversight of the Commission in accordance with the provisions of the FAR 52.232-25 including its provisions regarding calculation of interest penalties.

**7.3.** Payments hereunder shall not normally be made in advance of services rendered in accordance with 48 C.F.R. Subpart 32.4, unless required by the Utility's Tariffs. The applicability of this provision is limited to connection charge and line extension payments specifically cited in the Utility's Tariff.

**7.4.** Each payment made by Treasury check to the Utility shall include the Utility's billing stub(s). If payment is by Electronic Funds Transfer either through the Automated Clearing House (ACH) or the Federal Reserve Wire Transfer System, the provisions of FAR Subpart 52.232-34 shall apply (See Article 14).

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

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

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

**8.3.** Meters shall be inspected upon installation at no direct charge to the Ordering Agency. Subsequent inspection, periodic testing, repair, and replacement of meters shall be done in such place and manner as provided by the Commission's regulations. Upon notice that a meter is failing to register correctly, the Utility shall take immediate steps to effect replacement or repair. Ordering Agencies shall have the right to request a meter test in accordance with the procedures prescribed in the Commission's regulations. The tests and applicable meter accuracy standards are those set forth in the Commission's regulations. The expense of meter tests shall be borne by the party designated as responsible therefore in the Commission's regulations.

**8.4.** For the purposes of this Article 8, references to meters shall apply only to Utility-owned metering devices installed and maintained by the Utility in accordance with Commission guidelines for utility service(s). References to meters under this Article shall not apply to meters that are owned by the Government.

## **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 Utility's regulated Tariffs, together with the applicable Commission rules and regulations. The Ordering Agency shall provide, free of charge to the Utility, mutually agreeable locations on its premises for the installation of meters and such other equipment furnished and owned by the Utility and necessary to supply Service hereunder. The Utility 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, and shall assume all taxes and other charges in connection therewith. Notwithstanding anything to the contrary in FAR 52.241-5 (Contractor's Facilities (FEB 1995)), to the extent required by the Utility's Tariffs and the Commission's rules and regulations, and in accordance thereof, such equipment and facilities as for which the Utility has responsibility in accordance with this Article 9.1 shall be removed, or any underground equipment or facilities for which the Utility has responsibility in accordance with this Article 9.1, such underground equipment or facilities may be abandoned, and in both cases, the Agency's premises restored, by the Utility, within a reasonable time after discontinuance of service to the Ordering Agency. Such removal costs shall be paid by the Ordering Agency to the extent allowed by the Utility's regulated Tariffs, together with the applicable Commission rules and regulations.

**9.2.** All necessary rights-of-way, easements and such other rights necessary to permit the Utility to perform under this Areawide Contract shall be obtained and the expense for same borne in accordance with the Utility's Tariffs and the Commission's rules and regulations, together with the Utility's rules and regulations.

## **ARTICLE 10. LIABILITY.**

**10.1.** If the Government and/or an Ordering Agency has limited or restricted the Utility's right of access under Article 11 and thereby interfered with the Utility'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 Utility's liability, and the liability of any Affiliate of the Utility, 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 Utility's Tariffs. The Government expressly disclaims and waives any right to special or consequential damages resulting from a service interruption or electrical outage.

**10.3.** Except as provided above, and in accordance with the Utility's Tariffs and Terms and Conditions of Service, the Government shall not 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 the Utility's equipment or facilities by the Utility or any of its Affiliates or any of their respective employees or agents.

**10.4.** In accordance with the Utility's Tariff and/or Terms and Conditions of Service, neither the Utility nor any of its Affiliates, nor any of their respective officers, directors, employees, 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 the Utility's equipment or facilities by the Government, its employees or agents.

**10.5.** Neither the Utility nor any of its Affiliates shall be liable for incidents arising out of or in any way connected with the violation 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 out of the management and disposal of any pre-existing contaminated soils or ground water, hazardous or non-hazardous, removed from the ground as a result of work performed by the Utility.

**10.6.** The Government agrees to accept full responsibility for and bear all costs associated with pre-existing environmental conditions and pre-existing environmental liability. Responsibility for testing, abatement, remediation, and/or disposal of Hazardous Material, including, but not limited to, contaminated soil, lead paint, asbestos, fuel oil, or underground fuel oil 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 Utility shall stop work, notify the Contracting Officer and Activity personnel, 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 Government shall provide the Utility with written confirmation thereof, and the Utility shall resume work in that area.



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

**11.1.** In accordance with the Utility's Tariffs and Commission rules and regulations, the Utility shall have access to the premises served at all reasonable times during the Term of any Exhibit 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 Utility'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 reasonable manner considered by such authority to be reasonably necessary or advisable for the protection of human health, the environment or for reasons of homeland security. However, in the event the Government imposes any such limitation or restriction, the Utility shall first be given reasonable advance written notice specifying the nature and duration of the limitation or restriction being imposed and the basis therefor, and no such limitation or restriction shall be to such extent so as to prohibit the Utility from completing all work incident to the termination or expiration of this Areawide Contract or any individual Authorization.

## **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 Utility becomes aware that a change in ownership or company name has occurred, or is certain to occur, the Utility shall notify the Contracting Officer at the address provided in Section 15.1 not later than thirty (30) days after the effectiveness of any such ownership or name change. In the event the Utility 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 Utility hereunder.

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

**13.1.** The Utility represents that as of the Effective Date, individuals holding the following positions within the Utility's organization are currently authorized to negotiate and execute on its behalf with the Government in connection with this Areawide Contract:

1. Sourcing Director -505-241-3497
2. Strategic Account Manager - 505-241-2547
3. Service Delivery Manager - 505-241-3585

The Utility reserves the right to amend the foregoing list of positions at any time by delivering written notice to the Government at the address provided in Section 15.1.

## **ARTICLE 14. SUPPLEMENTAL CLAUSES.**

**14.1. 52.252-2** Clauses Incorporated by Reference.

This Areawide Contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text, with the term "Contractor" in each such incorporated clause deemed to refer to the "Utility" as that term is used in this Areawide Contract. Upon request, the Contracting Officer will make available the full text of the incorporated clauses listed below. Also, the full text of an incorporated clause may be accessed electronically at this/these address(es): <https://www.acquisition.gov/>.

- | <u>FAR REF</u> | <u>Federal Acquisition Regulation</u>                             |
|----------------|---|
| (1) 52.202-1   | Definitions (Nov 2013)  |
| (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 (Sept 2006) |
| (5) 52.203-7   | Anti-Kickback Procedures (May 2014)                               |

- (6) 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Apr 2014)
- (7) 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2015) as modified below
- (8) 52.204-19 Incorporation by Reference of Representations and Certifications (Dec 2014)
- (9) 52.216-24 Limitation of Government Liability (Apr 1984)
- (10) 52.216-25 Contract Definitization (Oct 2010)
- (11) 52.219-8 Utilization of Small Business Concerns (Oct 2014) as modified below
- (12) 52.222-21 Prohibition of Segregated Facilities (Apr 2015)
- (13) 52.222-26 Equal Opportunity (Apr 2015) as modified below
- (14) 52.222-35 Equal Opportunity for Veterans (Oct 2015) as modified below
- (15) 52.222-36 Equal Opportunity for Workers with Disabilities (Jul 2014) as modified below
- (16) 52.222-37 Employment Reports on Veterans (Feb 2016) as modified below
- (17) 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) as modified below
- (18) 52.222-50 Combating Trafficking in Persons (Mar 2015) as modified below
- (19) 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) as modified below
- (20) 52.225-13 Restrictions on Certain Foreign Purchases (June 2008) as modified below
- (21) 52.225-25 Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications (Oct 2015)
- (22) 52.232-18 Availability of Funds (Apr 1984)
- (23) 52.232-19 Availability of Funds for the Next Fiscal Year (Apr 1984)
- (24) 52.232-23 Assignment of Claims (May 2014)
- (25) 52.232-39 Unenforceability of Unauthorized Obligations (Jun 2013)
- (26) 52.233-1 Disputes (May 2014) as modified below
- (27) 52.233-2 Service of Protest (Sept 2006)
- (28) 52.233-3 Protest after Award (Aug 1996)
- (29) 52.233-4 Applicable Law for Breach Of Contract Claim (Oct 2004)
- (30) 52.241-3 Scope and Duration of Contract (Feb 1995)
- (31) 52.241-5 Contractor's Facilities (Feb 1995)
- (32) 52.241-6 Service Provisions (Feb 1995)
- (33) 52.241-7 Change in Rates or Terms and Conditions of Service for Regulated Services (Feb 1995)
- (34) 52.242-13 Bankruptcy (July 1995)
- (35) 52.243-1 Changes—Fixed Price (Alternate I) (Apr 1984) as modified below
- (36) 52.244-6 Subcontracts for Commercial Items (Jun 2016) as modified below

**14.2** Modification to FAR 52.219-8, 52.222-26, 52.222-35, 52.222-36, 52.222-37, 52.222-40, 52.222-50, 52.223-18, 52.225-13, and 52.244-6.

The Government and the Utility agree that Federal Acquisition Regulations (FAR) 52.219-8, 52.222-26, 52.222-35, 52.222-36, 52.222-37, 52.222-40, 52.222-50, 52.223-18, 52.225-13, and 52.244-6 apply to the Utility's use of subcontractors only when such subcontractors are engaged for projects undertaken for the specific benefit of an Ordering Agency. For illustration, if the Utility engages a subcontractor to perform work on the premises of an Ordering Agency or otherwise in connection with the Utility's provision of electric utility service to an Ordering Agency in particular, and the services provided by such subcontractor do not extend beyond the scope of the Utility's provision of

electric utility service to the Ordering Agency in particular, then clauses 52.219-8, 52.222-37, 52.222-40, 52.243-1, and 52.244-6 will be applicable to such subcontractor and subcontract. In contrast, if the Utility engages a subcontractor for purposes relating to the provision of electric utility service generally (or purposes relating to the provision of electric utility service to both an Ordering Agency and third parties), then the aforementioned clauses will not be applicable to such subcontractor and subcontract. Notwithstanding the foregoing, the Government and the Utility agree that the particular Federal Acquisition Regulations (FAR) referenced in this Section 14.2 shall not apply to any subcontracts which the Utility enters into on an accelerated timeframe or on an after-the-fact basis for the purpose of performing subcontracted work which the Utility, in its reasonable discretion, determines must be performed on an emergent basis.

#### **14.3 Modification to FAR 52.204-10.**

The Utility represents that as of the Effective Date, (a) the five most highly compensated Executives of the Utility hold the same positions with the Utility as with the Utility's parent corporation, PNM Resources, Inc., which is a publicly-held corporation; (b) the aforementioned Executives receive compensation from PNM Resources, Inc., rather than from the Utility; (c) such Executives' compensation is publicly reported by PNM Resources, Inc. pursuant to applicable federal securities laws; and (d) the Utility presently anticipates that (i) such Executives will continue to receive compensation from PNM Resources, Inc. rather than from the Utility, and (ii) that such Executives' compensation will continue to be publicly reported as required by law. In light of the foregoing representations by the Utility, the Government agrees that the continued public reporting of such Executives' compensation by PNM Resources, Inc. constitutes compliance by the Utility with Federal Acquisition Regulation (FAR) 52.204-10.

#### **14.4 Modification to FAR 52.243-1.**

The Government and the Utility agree that nothing in Federal Acquisition Regulation (FAR) 52.243-1 shall be construed to authorize the Government to make changes that are contrary to or otherwise inconsistent with the Utility's Tariffs.

#### **14.5 Modification to FAR 52.233-1**

The requirements of the Disputes clause at Federal Acquisition Regulation (FAR) 52.233-1 are supplemented to provide that matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this Areawide Contract, or involving any other interpretation of Contractor's Tariffs or of the rules and regulations of the Commission are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

#### **14.6 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.

### **ARTICLE 15. NOTICES.**

**15.1.** 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 Management and Services Program; Director, Energy Division, 1800 F Street, NW Room 5116, Washington, DC 20405.

**15.2.** All inquiries and notices to the Contractor regarding this Areawide Contract shall be mailed to: Sourcing Director and Legal Counsel\_ (**Telephone Numbers:** 505-241-3497 and 505-241-0879) or to such other person as the Contractor may hereafter designate in writing.

**15.3.** The Ordering Agency shall provide GSA with a copy of all fully executed Exhibits including any applicable attachments at the address provided in Article 15.1.

### **ARTICLE 16. MISCELLANEOUS.**

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

**16.2. 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).

**16.3. Obligation to Serve:** Nothing contained in this Areawide Contract shall obligate the Utility to take any action which it may consider to be detrimental to its obligations as a public utility or which it may consider to be a violation of its obligations under applicable state law, rules and regulations.

**16.4 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 Utility and Ordering Agency to address unamortized balances for connection charge.

**16.5. Indemnification:** Any indemnification language contained in standard form agreements executed between the Ordering Agency and the Utility shall be binding upon the Federal Government only to the extent authorized by opinions of the Government Accountability Office and the Federal Torts Claims Act.

**16.6. Waiver of Sovereign Immunity:** Any language contained in standard form agreements executed between the Ordering Agency and the Utility shall not be construed to waive the federal government's sovereign immunity, and may not be applicable where the federal government's sovereign immunity has not otherwise been waived by statutory law.

IN WITNESS WHEREOF, the parties have executed this Areawide Contract as of the day and the year first above written.

UNITED STATES OF AMERICA  
Acting through the Administrator  
of General Services

By: Miranda Wilkerson

GSA, PBS, Energy Division  
Contracting Officer

ATTEST:

By: Jerard Butler  
JERARD BUTLER  
GSA, PBS, Energy Division

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: Dolice Williams

Title: DIRECTOR, SOURCING

as agent for

PUBLIC SERVICE COMPANY OF NEW MEXICO

ATTEST:

By: \_\_\_\_\_

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

CERTIFICATE

I, HORACE WILLIAMSON, <sup>AN AUTHORIZED</sup> certify that I am AGENT of **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation (the "Corporation") named as the Utility in the negotiated Areawide Public Utility Contract No. GS-OOP-1 BSD-\_\_\_\_; that HORACE WILLIAMSON, who signed said Areawide Public Utility Contract on behalf of the Utility, was then SOURCING DIRECTOR of said Corporation; and that said Areawide Public Utility Contract was duly signed for and on behalf of said Corporation and is within the scope of its corporate powers.

/s/ Horace Williamson

(Corporate Seal)

**EXHIBIT "A"**

Utility's ID NO. \_\_\_\_\_ (Optional)  
Ordering Agency's ID \_\_\_\_\_ (Optional)

**PUBLIC SERVICE COMPANY OF NEW MEXICO**  
AUTHORIZATION FOR ELECTRIC UTILITY SERVICE, CHANGE IN ELECTRIC UTILITY SERVICE,  
OR DISCONNECTION AND/OR TERMINATION OF ELECTRIC UTILITY SERVICE UNDER  
**CONTRACT NO. GS-OOP-17-BSD-1230**

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

Pursuant to Contract No. GS-OOP-17-BSD-1230 between the Utility 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. Contract Article 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,  DSM Work,  
 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.

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: \_\_\_\_\_

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 Utility to the ordering Agency.

ACCEPTED:

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

**PUBLIC SERVICE COMPANY OF NEW MEXICO**  
(Utility)

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 the Energy Division (PMAA), General Services Administration, Washington, DC 20405.