

## STANDARD AGREEMENT

STD 2 (REV 5/91)

APPROVED BY THE  
ATTORNEY GENERAL

*Sent 2 originals to Gary Phelps 9-2-98*  
*Resent 11-2-98*  
 CONTRACT NUMBER 11-2-98  
 AM NO 11-2-98  
 PAYEE'S FEDERAL EMPLOYER I.D. NO. 1-12-99  
*filed*

THIS AGREEMENT, made and entered into this 1st day of Sept., 1998.

in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting

TITLE OF OFFICER ACTING FOR STATE  
ChiefAGENCY Dept. of General Services, Real Estate Services Div.  
Energy Assessments Section

NON STATE AGENCY

(hereafter called the DGS/EA), and

City of Redlands

(hereafter called the DGS/EA Customer).

## ELECTRIC SERVICE AGREEMENT

The Parties agree as follows:

1. Purpose of the Agreement

DGS/EA has entered into a Master Service Agreement with certain Electric Service Providers with the intent of having these entities provide electricity and/or related services to DGS/EA Customers. The purpose of this Agreement is to set forth the obligations that DGS/EA and DGS/EA Customers have in order to allow DGS/EA Customers to gain access to these Electric Service Providers pursuant to the Master Service Agreement.

Continued...

In witness whereof, this agreement has been executed by the parties hereto, upon the date first above written.

## NON-STATE GOVERNMENT AGENCY

## STATE OF CALIFORNIA

City of Redlands

AGENCY Department of General Services  
Real Estate Services Division

BY (AUTHORIZED SIGNATURE)

BY (AUTHORIZED SIGNATURE)

PRINTED NAME OF PERSON SIGNING  
William E. Cunningham  
Mayor

ATTEST:

PRINTED NAME AND TITLE OF PERSON SIGNING  
DOUGLAS M. GRANDYP.O. Box 3005  
Redlands CA 92373

City Clerk, Redlands

ADDRESS Chief, Energy Assessments Section

AMOUNT ENCUMBERED BY THIS DOCUMENT

\$

PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT

\$

TOTAL AMOUNT ENCUMBERED TO DATE

\$

PROGRAM/CATEGORY (CODE AND TITLE)

FUND TITLE

DEPARTMENT OF GENERAL SERVICES  
USE ONLY

ITEM

CHAPTER

STATUTE

FISCAL YEAR

ARF Work Order Number:

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.

T.B.A. NO.

B.R. NO.

SIGNATURE OF ACCOUNTING OFFICER

DATE

## 2. Definitions

"Account" means a specific DGS/EA Customer electric account, as identified by meter number and location, and/or UDC account number in Appendix A.

"CPUC" means the California Public Utilities Commission or its successor agency with regulatory jurisdiction over the retail sale of electric services in California.

"DGS/EA" means the State of California's Department of General Services, Energy Assessments Section.

"DGS/EA Customer" means City of Redlands, a public agency, which intends to receive electricity and/or related services through this Agreement.

"Direct Access" means the provision of electric power and related services to an end-use customer by an entity other than its UDC.

"Direct Access Service Request" (or "DASR") means the document submitted to a UDC pursuant to its Direct Access tariff(s), initiating a change in either an end-use customer's Electric Service Provider or conditions of service by an electric service provider.

"Electric Commodity" means unbundled electric requirements, as defined in Section 6.2 of this Agreement.

"Electric Service Provider" (or "ESP") means an entity other than the UDC that provides electric power and/or related services to an end-use customer pursuant to the UDC's Direct Access tariff(s).

"FERC" means the Federal Energy Regulatory Commission.

"Full Service Provider" means a provider of bundled electric commodity, Scheduling Coordination, and Revenue Cycle Services under this Agreement.

"Independent System Operator" (or "ISO") means the California Independent System Operator.

"Interval Meter" means a meter that meets all applicable requirements established by the CPUC's Direct Access rules, as set forth in Appendix A to D.97-10-087 and any other applicable CPUC decision or rule.

"Master Service Agreement" (or "MSA") means Master Service Agreement RFP MSA 7013 (and Revision A) between the Service Providers offering electric services to DGS/EA Customers and DGS/EA.

"Power Exchange" (or "PX") means the California Power Exchange as identified in Chapter 2.3 of the California Public Utilities Code.

"Prudent Electric Practice" means those practices, methods and acts, including provision for contingencies, that electric utilities and ESPs within the Western United States commonly used to provide electric services reliably, safely, efficiently and economically and in accordance with all applicable laws and governmental rules, regulations and orders.

"Requirements" means the total amount of electric power necessary for a DGS/EA Customer Account to meet its needs during a particular monthly billing cycle.

"Revenue Cycle Services" generally means services related to the metering and billing of electric power. Such services may include, without limitation: metering services (including meter sales, installation, testing and maintenance), meter data management services (including meter reading, validation, editing, transferral and record keeping), billing services, and preparation and dissemination of customer information.

"Scheduling Coordinator" means the person or entity responsible for matching the DGS/EA Customer's electric power load with generation and for submitting electric power schedules as prescribed by the CPUC, FERC, and other applicable reliability guidelines and requirements.

"Service Provider" means an ESP selected by DGS/EA to offer services under this Agreement to DGS/EA Customers.

"Utility Distribution Company" (or "UDC") means the public utility providing distribution wire service to the DGS/EA Customer.

### 3. Term and Termination

This Agreement shall be effective from the date noted above. Either Party may terminate this Agreement upon 60 days' written notice, provided that all Accounts, as shown in Appendix A, have completed their service term, and provided that the DGS/EA Customer has made all payments due under the Agreement. Unless terminated earlier in accordance with Sections 3, 9 or 10 of this Agreement, this Agreement will terminate on March 31, 2000, or upon completion of the term(s) of any appendices to this Agreement, whichever is later.

### 4. Authority and Agency Relationship

The DGS/EA Customer appoints DGS/EA as the DGS/EA Customer's agent for the term of this Agreement to coordinate the procurement of electricity and related services for the Accounts listed in Appendix A, and to take such actions, including the execution of agreements with third parties, as are reasonably required in order to provide services under this Agreement. Unless DGS/EA is identified in this Agreement or in an appendix

hereto as a provider of electric services, DGS/EA is acting solely as an agent in the procurement process and does not take title to any electricity delivered by a Service Provider to a DGS/EA Customer, and does not assume legal responsibility for such deliveries or liability for any failure of a Service Provider. The DGS/EA Customer recognizes that DGS/EA has made all reasonable steps to ensure that each Service Provider is capable of providing reliable service to DGS/EA Customers. However, DGS/EA cannot guarantee any third party's performance of that party's separate responsibilities to the DGS/EA Customer.

##### 5. DGS/EA Obligations

DGS/EA shall be responsible for arranging for the procurement of electric Requirements and associated services for the Accounts identified in Appendix A. It is the desire of DGS/EA to make the procurement of electric Requirements and services simple and reliable, and at a price within the range of the California market for similar goods and services. In the provision of these services, DGS/EA or its authorized agents will:

- Offer DGS/EA Customers a variety of options for the acquisition of electricity and related services, including Scheduling Coordination and Revenue Cycle Services, in accordance with applicable California law and agency requirements, at rates, terms and conditions deemed reasonable to DGS/EA in accordance with the MSA; provided that rates, terms and conditions for specific service options offered by third party service providers or by DGS/EA shall be as set forth in the appendices attached hereto;
- Execute a UDC-ESP Service Agreement and comply with all laws, orders, and regulations governing ESPs (if providing service as an ESP).
- Protect from disclosure to entities other than the Service Provider all DGS/EA Customer Account usage data and other customer information identified as confidential by the DGS/EA Customer, unless such data or information is publicly available or required to be disclosed in order to comply with any applicable law, order or regulation;
- Monitor the performance of all Service Providers;
- Periodically update the electric service options available to DGS/EA Customers by soliciting bids for electric Requirements and associated services from suppliers, and inform each DGS/EA Customer when new services become available;
- Participate in relevant CPUC electric proceedings to assess the impact of regulatory developments on DGS/EA Customers;
- Provide general information, advice and additional assistance on any matters associated with the provision of electric service to the DGS/EA Customer Accounts

listed in Appendix A. For example, DGS/EA will provide DGS/EA Customers with information regarding service options, etc.

## 6. DGS/EA Customer Options

Under this Agreement, a DGS/EA Customer may select a "bundled" or "full" service option, in which a Full Service Provider supplies firm or interruptible electric power Requirements (either "all source" power or "green power" obtained from renewable generation sources), together with all associated Scheduling Coordination and Revenue Cycle Services (including meter services, meter data management, billing and customer information). Alternatively, a DGS/EA Customer may opt to separately select, on an "unbundled" basis, one or more of these services. In the appendices to this Agreement, the DGS/EA Customer shall indicate which options and Service Provider(s) it has chosen, and which goods and services it has agreed to purchase through DGS/EA under the terms of this Agreement. In Appendix A to this Agreement, the DGS/EA Customer has listed all Accounts (identified by location and UDC account number) subject to this Agreement

### 6.1 Full Service

A DGS/EA Customer choosing to take service from a Full Service Provider will receive firm or interruptible electric Requirements and associated services according to the rates, terms and conditions set forth in the applicable appendix to this Agreement, the MSA, and any additional contract between the DGS/EA Customer and the Full Service Provider. In general, the Full Service Provider will supply or arrange for the provision of electric commodity (either "all source" or green power, according to the DGS/EA Customer's election), together with all necessary Scheduling Coordination, transmission and distribution, and Revenue Cycle Services.

### 6.2 Unbundled Electric Commodity

A DGS/EA Customer purchasing "Unbundled Electric Commodity" service under this Agreement will receive firm or interruptible electric Requirements according to the rates, terms and conditions set forth in the applicable appendix to this Agreement, the MSA and any additional contract between the DGS/EA Customer and the Service Provider. The Service Provider will coordinate as necessary with the providers of Scheduling Coordination and/or Revenue Cycle Services.

### 6.3 Unbundled Schedule Coordination

A DGS/EA Customer purchasing "unbundled Schedule Coordination" service under this Agreement will receive Scheduling Coordination service at the rates, terms and conditions set forth in the applicable appendix to this Agreement, the MSA and any additional contract between the DGS/EA Customer and the Service Provider. The Scheduling Coordinator will coordinate as necessary with the providers of commodity and/or Revenue Cycle Services.

Unless otherwise indicated, the Scheduling Coordinator will perform all necessary Scheduling Coordination functions, and initially pay all charges associated with Scheduling Coordination assessed by the ISO and the PX. This obligation includes, without limitation: 1) scheduling electric power deliveries to each DGS/EA Customer Account subject to the tariffs and protocols of the ISO and PX; 2) providing all ancillary services required for the transportation of electric power to the Delivery Point(s); 3) compensating the ISO for transmission losses; 4) paying charges of the ISO and the PX; and 6) paying for energy imbalance and unaccounted for energy charges imposed by the ISO. The Scheduling Coordinator may, in performing its responsibilities, rely upon the ISO's real time balancing services in a manner consistent with the provisions of the MSA, applicable, tariffs, and Prudent Electric Practice.

### 6.4 Unbundled Revenue Cycle Services

A DGS/EA Customer purchasing electric power from a non-DGS/EA supplier may opt to separately purchase "unbundled Revenue Cycle Services" under this Agreement. In general, such services will consist of metering services, meter data management (including meter reading), billing and customer information services. Details regarding such services and the applicable rates, terms and conditions are set forth in the appendices to this Agreement and in separate contracts with individual Service Providers. If a DGS/EA Customer receives Unbundled Electric Commodity, Schedule Coordination or Revenue Cycle services under this Agreement, it must arrange for all necessary coordination between its commodity supplier, Scheduling Coordinator and/or Revenue Cycle Services provider(s) in a manner that is agreeable to all parties and will enable the effective provision of services under this Agreement.

## 6.5 Interval Meter Purchase and Installation

According to the currently applicable rules and regulations of the CPUC, a DGS/EA Customer Account with a load of 50 kW or more must have an Interval Meter that meets the technical specifications approved by the CPUC.<sup>1</sup> If the DGS/EA Customer is taking service from a Full Service Provider, the Full Service Provider will supply new meters (if needed), together with necessary testing, certification and maintenance, at the rates, terms and conditions indicated in the applicable appendices. Otherwise, a DGS/EA Customer may purchase a meter separately from one of the Service Providers offering unbundled Revenue Cycle Services. A DGS/EA Customer may not begin receiving service under this Agreement until an appropriate meter has been installed, tested and certified as meeting the CPUC's requirements.

## 7. DGS/EA Customer Obligations

The DGS/EA Customer agrees to:

- Purchase through DGS/EA, and from the indicated Service Provider(s) (if other than DGS/EA) its electric Requirements and/or other services associated with the Account(s) listed in Appendix A at the rates, terms and conditions set forth in the applicable appendices;
- Pay to DGS/EA a service fee that shall be set forth in Appendix B to this Agreement.
- If meter consumption data is maintained by a Meter Data Management Agent ("MDMA") other than DGS/EA or a Service Provider providing services through the DGS/EA procurement process, the DGS/EA Customer must provide DGS/EA with written proof that the MDMA is qualified under the applicable requirements of the CPUC. The MDMA must submit monthly meter consumption data to the Service Provider which provides the billing services. The data must be submitted on a schedule and in a form to be prescribed by DGS/EA or the Service Provider;
- Cooperate with DGS/EA when DGS/EA prepares requests for proposals, bids, contracts or other documents in order to allow DGS/EA to offer existing or additional electric services to the DGS/EA Customer. (Such cooperation will include providing data and other information that DGS/EA requires in order to prepare such documents.);

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<sup>1</sup> As of the date of this Agreement, interim CPUC regulations permit accounts with a maximum demand (as defined in the UDC tariffs) between 20 and 50 kW to take service from non-UDC electric service providers without installing an interval meter. Be advised, however, that this permissive regulation may be eliminated in the future. DGS/EA Customers with loads less than 50 kW are advised to consult with DGS/EA regarding metering and load profiling options.

- Make payments to the Service Provider providing billing services in the amounts invoiced, in accordance with the applicable Service Provider's procedures;
- Notify DGS/EA and the Service Provider(s) in advance of any scheduled changes in operations that might cause its estimated electric Requirements to significantly change. Unscheduled changes in operations should be brought to the attention of DGS/EA and the Service Provider as soon as possible. Such changes in operations would include, but not be limited to, shutting off major equipment, new facilities being added to the load, etc. Should the DGS/EA Customer fail to advise DGS/EA and the Service Provider of any changes in operations as soon as such changes are known, the DGS/EA Customer will be liable to the Service Provider for any increased costs or penalties incurred as a result.
- Provide written notification to DGS/EA of any significant problems or delays regarding the provision of services by a Service Provider under the MSA and this Agreement.

#### 8. Billing and Payment

The DGS/EA Customer's billing preferences are set forth in Appendix C to this Agreement. First, the DGS/EA Customer has a choice of which party shall render invoices to the DGS/EA Customer. The DGS/EA Customer can opt to have the UDC, the Electric Service Provider, or DGS/EA provide the total bill (containing the others' charges) to the DGS/EA Customer. Alternatively, the DGS/EA Customer may choose to have disaggregated billing, in which the parties would render separate invoices for their respective charges.

Secondly, the DGS/EA Customer also should indicate whether it prefers a single master invoice or multiple invoices. If the DGS/EA Customer chooses to receive multiple invoices, it must clearly indicate the manner in which it wishes Accounts to be grouped for invoicing purposes. Procedures for billing and payment will be established separately by the Service Provider, and set forth in an appendix to this Agreement and/or in a separate contract between the Service Provider and the DGS/EA Customer.

#### 9. Default and Dispute Resolution

The failure of either the DGS/EA Customer or DGS/EA to fulfill any material duties or obligations under this Agreement shall be a default. The Parties shall deal in good faith and attempt to resolve potential disputes informally. Any dispute arising under the terms of this Agreement that is not disposed of within a reasonable period of time by discussion between the representatives of DGS/EA and the DGS/EA Customer normally responsible for the administration of this Agreement shall be brought to the attention of each Party's department director or designee for joint resolution. If agreement cannot be reached through the intervention of the department directors/designees, either Party may pursue its rights and remedies in any manner permitted by law.

10. Regulatory Change

Should the CPUC, FERC, the California Legislature, or UDC act in a manner that is in conflict with sound business practices, or imposes significant unanticipated risk on either Party to this Agreement, or substantially prevents either Party from performing its functions under this Agreement, the Parties shall meet and negotiate in good faith an appropriate amendment to this Agreement. If the Parties are unable to renegotiate the terms of this Agreement either DGS/EA or the DGS/EA Customer may terminate this Agreement on no less than 90 days' notice, provided, however, that if the date the anticipated change is scheduled to take effect less than 90 days from the completion of negotiations, then termination may occur on the day that the change commences. The DGS/EA Customer shall pay any service fees incurred prior to termination.

The Parties agree that delay in full implementation of Direct Access by the ISO, FERC, the CPUC or any other regulatory or judicial entity shall not be considered a regulatory change under this section unless the Parties mutually agree to consider it such.

11. Assignment

Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Neither DGS/EA nor the DGS/EA Customer may, in any event, assign this Agreement to any non-public entity.

12. Integration

This Agreement and applicable appendices constitutes the entire agreement between the Parties. No amendment, modification or change to this Agreement shall be enforceable except by written amendment agreed to and executed by both Parties. No waiver, benefit, privilege or service voluntarily given or performed by either Party shall give the other any contractual right by custom, estoppel, or otherwise.

13. Limitation of Liability

The DGS/EA Customer acknowledges and agrees that to the extent DGS/EA is arranging for provision of any services under this Agreement via contract with third parties, DGS/EA shall have no liability for the actions of those third parties. In any event, the Parties' remedies under this Agreement shall be limited to direct actual damages only. Neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages of any kind.

14. Conflict with Existing Law

The DGS/EA Customer and DGS/EA agree that if any provision of this Agreement is found to be illegal or unenforceable, such provision shall be stricken and all remaining provisions of the Agreement shall remain in full force and effect.

15. PUBLIC ENTITY EXPENDING STATE FUNDS:

The contracting parties shall be subject to the examination and audit or the Auditor General for a period of three years after the final payment under the contract (Government Code Section 10532) if the amount is over \$10,000.

16. AMENDMENT:

This agreement may be amended by written mutual consent of both parties.

17. NONDISCRIMINATION CLAUSE:

During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40) marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7885.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This contractor shall include the nondiscrimination and compliance provision of this clause in all subcontracts to perform work under this contract.

18. STATEMENT OF COMPLIANCE:

The Contractor, by signing the contract, constitutes a certification under the penalty of perjury under the laws of the State of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12900 (a-f) and Title 2, California Code of Regulations, Section 8103.

19. DRUG-FREE WORKPLACE CERTIFICATION:

By signing this contract, the contractor grantee hereby certifies under penalty of perjury under the laws of the State of California that the contractor or grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug free workplace by taking the following actions:

A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).

B. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and
- 4) penalties that may be imposed upon employees for drug abuse violations.

C. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed contract:

- 1) will receive a copy of the company's drug-free policy statement; and,
- 2) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both and the contractor or grantee may be ineligible for award of any future state contracts if the department determines that any of the following has occurred: (1) the contractor or grantee has made a false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

## 20. AMERICANS WITH DISABILITY ACT:

By signing this contract, Contractor assures that state that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

## 24. Notices

All notices to DGS/EA should be sent to:

Department of General Services / Energy Assessments  
717 K Street, Suite 409  
Sacramento, CA 95814  
Attn: Electric Program Manager

Communications regarding routine matters or emergencies should be via telephone, fax or e-mail to the appropriate customer representative.

All notices to the DGS/EA Customer should be sent to:

Name: City of Redlands

Address: P.O. Box 3005

Redlands CA 92373

Attn: Gary G. Phelps

If the DGS/EA Customer wishes to supply contact names and numbers for individual Accounts, such information should be included in Appendix A.

APPENDIX A  
SUMMARY OF ACCOUNT INFORMATION

1. DGS/EA Customer name: City of Redlands
2. Facility name and location address:<sup>2</sup>  
Various City Facilities and Sites
3. UDC: SCE UDC Account number(s): See Electronic Data sent by Henwood Energy Services
4. Billing address: City of Redlands  
Finance Dept. - Accounting Section  
P.O. Box 3005, Redlands CA 92373
5. Billing codes (if any):
6. Contact (for scheduling/delivery questions):  
Name: Gary G. Phelps  
Phone: (909) 798-7698  
Fax: (909) 798-7670
7. Contact (for billing questions):  
Name: Bonnie Johnson  
Phone: (909) 798-7543  
Fax: (909) 798-7602
8. Other:

<sup>2</sup>Please complete a separate Summary of Account Information form for each facility location. If a facility has more than one Account at the same address, please clearly identify each account in response to Question 3.



## APPENDIX B DGS/EA SERVICE FEE

Effective July 1, 1998, the DGS/EA monthly service fee for services provided under this DGS/EA Interagency Electric Service Agreement shall be .25% (25/100<sup>th</sup> of a percent) of the product of: (a) the otherwise applicable tariff rate and (b) the consumption in kWhrs.

For example: if the UDC would have charged \$100 in a month for service to a DGS/EA Customer, then the DGS fee would be \$0.25 (i.e., .25% times \$100). This service charge may be adjusted from time to time, subject to prior 30-day written notice by DGS/EA to the DGS/EA Customer.

Except for the event described below the total of the DGS/EA service fee, plus all other applicable charges from DGS/EA, Service Provider(s) and the UDC, will not exceed the amount that the DGS/EA Customer would be charged for equivalent bundled service under the otherwise applicable UDC rate schedule.

In the event that the DGS/EA Customer chooses a service option which is priced above market (e.g., green power priced at a premium), the preceding paragraph does not apply.

## APPENDIX C

### DGS/EA CUSTOMER'S BILLING PREFERENCES

#### Invoices Should Be Submitted To The DGS/EA Customer By:

- ☒ The Local Utility Distribution Company (UDC)
- ☐ DGS/EA
- ☐ The Energy Service Provider
- ☐ Each party ("Disaggregated" Bills)

#### Style Of Billing

- ☒ Master (all DGS/EA Customer's Accounts Shown)
- ☐ Multiple Locations (e.g., Invoices by Dept. or Geography)

**Note:** During the first few months of service, billing option is defaulted to the UDC – Consolidated option. DGS/EA will convert billing to the preferences, as indicated above, as soon as practicable.

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ATTACHMENT 4  
ESP & DGS/EA CUSTOMER RESPONSIBILITY

The purpose of this Attachment is to establish the responsibilities of \_\_\_\_\_ (the "Electric Service Provider") and City of Redlands (the "DGS/EA Customer"), also referred to herein individually as "Party" and collectively as the "Parties".

Recitals

- A. The Electric Service Provider is a \_\_\_\_\_ corporation with headquarters located at \_\_\_\_\_.
- B. The DGS/EA Customer is a state or local public sector entity that purchases electric services pursuant to an agreement with DGS/EA.
- C. The DGS/EA Customer intends to purchase electric services from the Electric Service Provider, and the Electric Service Provider intends to provide such electric services, pursuant to the terms and conditions of this Attachment 4, the associated Service Order and the MSA 7013 (including all revisions thereto).

1. Definitions

"Account" means a specific DGS/EA Customer account, as identified by meter number and location and/or UDC account number in Attachment 1 to the associated Service Order.

"CPUC" means the California Public Utilities Commission or its successor agency with regulatory jurisdiction over the retail sale of electric services in California.

"Delivery Point" means the point at which the facilities of the UDC interconnect with the DGS Customer's facility.

"DGS/EA Service Fee" means the service fee paid to DGS/EA by the DGS/EA Customer pursuant to Appendix B of the agreement between DGS/EA and the DGS/EA Customer.

"Direct Access" means the provision of electric power and related services to an end-use customer by an entity other than its UDC.

"Direct Access Service Request" or "DASR" means the document submitted to a UDC pursuant to its Direct Access tariff(s), initiating a change in either an end-use customer's Electric Service Provider or conditions of service by an Electric Service Provider.

"Electronic Data Interchange" or "EDI" means the capability to exchange data between the DGS/EA Customer and the Electric Service Provider as needed to conduct business under this Attachment 4. Such capability shall also include the ability to make electronic payments for services rendered under this Attachment 4.

"Electric Service Provider" or "ESP" means an entity other than the UDC that provides electric power and/or related services to an end-use customer pursuant to the UDC's Direct Access tariff(s).

"FERC" means the Federal Energy Regulatory Commission.

"Force Majeure" shall have the meaning set forth in the MSA, except that the definition of Force Majeure shall not include a regulatory change, which is separately defined and addressed in Section 11.

"Full Service Provider" means an ESP that provides electricity and required associated services such as scheduling coordination and revenue cycle services.

"Independent System Operator" or "ISO" means the California Independent System Operator.

"Interval Meter" means a meter that meets all applicable requirements established by the CPUC's Direct Access rules, as set forth in Appendix A to D.97-10-087 and any other applicable CPUC decision or rule.

"Master Service Agreement" or "MSA" means Master Service Agreement RFP MSA 7013 between the Electric Service Provider and DGS/EA, including its appendices and any subsequent revisions to either the MSA or its appendices.

"Power Exchange" or "PX" means the California Power Exchange, as identified in Chapter 2.3 of the California Public Utilities Code.

"Prudent Electric Practice" means those practices, methods, and acts, including provisions for contingencies, that electric utilities and ESPs within the western United States commonly employ to provide electric services reliably, safely, efficiently, economically and in accordance with all applicable laws and governmental rules, regulations and orders.

"Requirements" means the total amount of electric power necessary for the DGS/EA Customer Account to meet its needs during a particular monthly billing cycle.

"Revenue Cycle Services" generally means services related to the metering and billing of electric

power. Such services may include, without limitation: metering services (including meter sales, installation, testing and maintenance), meter data management services (including meter reading, validation, editing, transferral and record keeping), billing services, and preparation and dissemination of customer information.

"Service Order" means a letter agreement prepared by DGS/EA, and executed by DGS/EA and an Electric Service Provider, describing and specifying rates, terms and conditions applicable to the electric services procured through DGS/EA and available to DGS/EA Customers.

"Utility Distribution Company" or "UDC" means the public utility company providing distribution wire service to the DGS/EA Customer.

"UDC Charges" means charges imposed by the UDC under applicable tariffs for electric services provided to a customer taking Direct Access service from an Electric Service Provider. Such charges may include, without limitation, distribution service charges, ISO access charges, competitive transition charges, charges for public purpose programs and other nonbypassable charges, applicable taxes and franchise fees.

## 2. Term and Termination

The term of this Attachment 4 shall coincide with the term of the associated Service Order. To the extent that the Service Order or the agreement between DGS/EA and the DGS/EA Customer are terminated, for any reason, then this Attachment 4 also shall terminate on the same date.

In addition, this Attachment 4 may also terminate in accordance with Sections 9 or 12 of this Attachment 4.

## 3. Relationship with MSA

The DGS/EA Customer has chosen to purchase services from the Electric Service Provider as a result of the Electric Service Provider's participation in the DGS/EA solicitation process, and on the basis of the Electric Service Provider's promise to provide service in accordance with rates, terms and conditions set forth in the Master Services Agreement ("MSA"). Therefore, the Electric Service Provider agrees that it will provide service to the DGS/EA Customer that is consistent with the relevant terms and conditions in the MSA, and with any Service Order issued thereunder.

DGS will not take possession of electricity nor be liable for payments associated with this service. DGS acts as an agent for its client agencies arranging delivery of electrical services.

## 4. Obligations of Electric Service Provider

#### 4.1 Provision of Electric Services

The Electric Service Provider, acting as a Full Service Provider, shall be responsible for supplying electric Requirements, schedule coordination, and Revenue Cycle Services to the DGS/EA Customer Accounts identified in Appendix A hereto.<sup>1</sup> Unless the DGS/EA Customer expressly agrees that services may be provided by an agent or subcontractor, all services shall be provided directly by the Electric Service Provider. The DGS/EA Customer's selection from among the Electric Service Provider's service options (if any) and metering information shall be indicated for each Account in Appendix A. Such services shall be governed by the terms and conditions in the MSA, and associated Service Order(s), this Attachment 4 and applicable appendices hereto.

#### 4.2 Direct Access Service Arrangements

Unless otherwise provided in a Service Order or appendix to this Attachment 4, the Electric Service Provider will be responsible for preparing, submitting and obtaining the timely approval of the Direct Access Service Request ("DASR") and any other documents necessary to arrange with the UDC for the commencement of service under this Attachment 4. The Electric Service Provider will keep the DGS/EA Customer and DGS/EA informed as to the progress of such arrangements.

#### 4.3 Schedule Coordination

Unless otherwise indicated herein, the Electric Service Provider will perform all necessary scheduling coordination functions, and initially pay all charges associated with schedule coordination assessed by the Independent System Operator ("ISO") and the California Power Exchange ("PX"). This obligation includes, without limitation: 1) scheduling electric power deliveries to each DGS/EA Customer Account(s) subject to the tariffs and protocols of the ISO and PX; 2) providing all ancillary services required for the transportation of electric power to the Delivery Point(s); 3) compensating the ISO for transmission losses;

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<sup>1</sup> If the Parties are contracting for bundled service for some Accounts and unbundled service for others, the services applicable to each Account should be clearly indicated in Appendix A.

4) paying any congestion charges imposed by the ISO; 5) paying for the administrative charges of the ISO and the PX; and 6) paying for energy imbalance and unaccounted for energy charges imposed by the ISO. The Electric Service Provider may, in performing its scheduling coordination responsibilities, rely upon the ISO's real time balancing services in a manner consistent with the provisions of the MSA, applicable tariffs, and Prudent Electric Practice.

4.4 Compliance with ESP requirements

The Electric Service Provider shall comply with all laws, regulations, standards and tariffs applicable to it as an Electric Service Provider providing services to the DGS/EA Customer.

4.5 Coordination with other Service Providers

The Electric Service Provider acknowledges that the DGS/EA Customer may choose to purchase new meters (together with installation and testing services) from another entity. If this occurs, the Electric Service Provider is obligated to coordinate as necessary with the entity providing such metering services, to share DGS/EA Customer information, if necessary, and to otherwise act in a manner that facilitates the effective and timely performance of each party's obligations to the DGS/EA Customer.

4.6 Responsibility for Performance of Agents

If an agent of the Electric Service Provider is to provide any services under this Attachment 4, the Electric Service Provider assumes full responsibility for the agent's performance under the terms of this Attachment 4 and the MSA, and will be liable to DGS/EA and/or the DGS/EA Customer for any default or failure to perform.

4.7 DGS/EA Service Fee

The DGS/EA Customer has, pursuant to Appendix B of the agreement between the DGS/EA Customer and DGS/EA, agreed to pay DGS/EA a service fee in exchange for services rendered that agreement. The Electric Service Provider shall include this DGS/EA Service Fee as a separate line item in its monthly invoice to the DGS/EA Customer. The ESP shall, upon collection of this service fee from the DGS/EA Customer, turn over such monies to DGS/EA according to procedures that shall be established by agreement between DGS/EA and the Electric Service Provider.

## 5. Obligations of DGS/EA Customer

### 5.1 Obligation to pay for Electric Services

The DGS/EA Customer will pay for the electric services provided under this Attachment 4, at the rates set forth in Appendix A and pursuant to the terms and conditions set forth below. Regardless of whether the DGS/EA Customer has chosen Consolidated or Separate billing, the DGS/EA Customer agrees to pay all invoiced charges in full and in a timely manner in accordance with Section 8 of this Attachment. The DGS/EA Customer will also reimburse the Electric Service Provider for any costs or service charges that may be imposed by the UDC for arranging service changes.

### 5.2 Information/Access to Facilities

The DGS/EA Customer will provide the Electric Service Provider information and all other assistance necessary for preparation of the DASR and as otherwise needed for implementation of Direct Access service to the DGS/EA Customer's Account(s). The DGS/EA Customer authorizes the Electric Service Provider to obtain information from the UDC regarding the DGS/EA Customer's electric power load profile, billing, credit history and metering arrangements to the extent necessary for performance of obligations under this Attachment 4. The DGS/EA Customer further authorizes the Electric Service Provider to obtain metering data, usage or other information relevant to billing inquiries or disputes from the UDC or from any ESP providing metering, meter data management or similar services to the DGS/EA Customer. DGS/EA Customer information shall be protected in accordance with the confidentiality provisions in the MSA and this Attachment 4.

The DGS/EA Customer will identify in Appendix A the Account(s) (if any) requiring installation of new interval meters prior to initiation of service under this Attachment 4. If necessary, the DGS/EA Customer will provide the Electric Service Provider access to on-site meters and other interconnection facilities. Access shall be provided at a time convenient to both parties.

### 5.3 Notice of Change in Electric Power Load

The DGS/EA Customer will use its best efforts to provide at least 5 days advance notice to both the Electric Service Provider and DGS/EA of any change in operations (e.g. the DGS/EA Site is shut down, increases or reduces its electricity usage, begins a new level of operations) or other event that would significantly affect the level of DGS/EA Customer Requirements. Unless the Parties expressly agree otherwise, a change in the DGS/EA Customer's Requirements will not alter

the Electric Service Provider's obligation to supply electric power to meet all Requirements, nor will it affect the rates charged under this Attachment 4.

5.4 Compliance with Regulatory Requirements

The DGS/EA Customer shall be responsible for complying with all laws, regulations, standards and tariffs applicable to it as a purchaser of Direct Access services.

6. Transfer of Title/Risk of Loss

Unless otherwise provided herein, title to, possession of, and risk of loss of electric power shall transfer from the Electric Service Provider to the DGS/EA Customer at the Delivery Point. The Electric Service Provider warrants title to the electric power sold and delivered under this Attachment 4, free and clear of all liens, claims and encumbrances arising prior to the Delivery Point, and the Electric Service Provider warrants the right of the Electric Service Provider to sell such electric power. The Electric Service Provider shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the electric power prior to the Delivery Point, and the DGS/EA Customer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the electric power at and after the Delivery Point.

7. Rates and Billing Determinants

The rates for services provided by the Electric Service Provider under this Attachment 4 are set forth in Attachment 1 to the associated Service Order. The rate for electric power will, unless otherwise indicated, be multiplied by the DGS/EA Customer's energy usage measured at the Delivery Point(s) and adjusted by the UDC's applicable distribution loss factor. The Electric Service Provider expressly warrants that the DGS/EA Customer's total monthly bill for electric Requirements, inclusive of all charges including the DGS/EA Service Fee, shall not be greater than what the DGS/EA Customer would have paid to its UDC for similar service at tariffed rates during the applicable billing month.

8. Billing and Payment

8.1 Choice of Billing Method

The DGS/EA Customer has a choice between Consolidated or Separate Billing service. If the DGS/EA Customer opts for Consolidated Billing, all charges, including UDC Charges, will be combined in a single monthly bill. If the DGS/EA Customer opts for Separate Billing, the UDC Charges will be billed

separately by the UDC under applicable tariffs. The DGS/EA Customer's choice of billing method is indicated in Appendix C of the associated Service Order.

## 8.2 Level of Detail

The DGS/EA Customer may, depending on its needs and preferences, opt for either a single master invoice or multiple invoices (e.g. dividing service into subgroups). If the DGS/EA Customer chooses to receive multiple invoices, it must clearly indicate the manner in which it wishes Accounts to be grouped for invoicing purposes. The DGS/EA Customer's choice of level of detail is indicated in Appendix C of the associated Service Order. The DGS/EA Customer has the option of changing its instruction regarding the level of detail upon 60 days written notice to the Electric Service Provider.

## 8.3 Invoicing and Payment Procedures

The Electric Service Provider, or its agent, will issue a monthly invoice detailing the applicable charges and credits, and also providing additional information, including an estimate of the cost of equivalent tariffed service from the UDC, for purposes of comparison. The DGS/EA Customer will remit full payment of all invoiced charges to the Electric Service Provider in accordance with the Master Service Agreement. Payment should be in the form of electronic funds transfer or other means mutually agreed upon in writing by the Parties. If the DGS/EA Customer has opted for Separate Billing, the DGS/EA Customer's obligation to pay charges separately by the UDC shall be independent of the DGS/EA Customer's obligation under this section. Such payments shall be remitted directly to the UDC, and questions or disputes concerning the UDC bill must be directed to the UDC.

## 8.4 Billing Disputes

If there is a dispute between the DGS/EA Customer and the Electric Service Provider as to either: (a) the existence of a billing error or (b) the amount of a billing error, the other Party should be notified immediately. In order to provide a measure of finality to billing, the opportunity for either Party to submit notice of a billing error is limited to 90 days from the date of the invoice; provided, however, that this time limit may be waived by express agreement between the Parties. Upon notification or discovery of any error, the Electric Service Provider will review the invoice and calculate what correction (if any) is necessary. The

Electric Service Provider will attempt to incorporate any necessary correction in the next invoicing cycle. If, following the Electric Service Provider's initial investigation of the alleged error, there remains a dispute over billing, the Parties shall endeavor, through good faith negotiations, to resolve the dispute by mutual agreement within 30 days after the completion of the Electric Service Provider's initial investigation. This good faith negotiation period may be extended by mutual agreement between the Parties. If a settlement cannot be made within the designated negotiation period, the Parties will proceed to arbitration, as provided in section 10.

#### 8.5 Failure to Pay

If the DGS/EA Customer fails to pay any monthly invoice in full and/or is late in submitting payment, the Electric Service Provider may, in addition to any other remedy permitted to it under the law and this Attachment 4, (a) require a reasonable advance deposit on any future services to be provided by the Electric Service Provider to the DGS/EA Customer, or (b) upon 30 days notice, terminate this Attachment 4 or suspend or terminate service to the specific DGS/EA Customer Accounts for which payment has not been rendered, in accordance with the applicable rules and policies of the CPUC. In addition, the Electric Service Provider may charge the DGS/EA Customer interest on any unpaid amount, subject to the limitations set forth in section 926.17(b) of the Government Code. In any event, the DGS/EA Customer will have a continuing obligation to pay in full all outstanding charges and any applicable penalties.

### 9. Default and Termination

#### 9.1 Default

Except in the event of a Force Majeure event as defined in section 11 below, the failure of either the DGS/EA Customer or the Electric Service Provider to fulfill any material duties or obligations under this Attachment 4 shall be a default. Unless otherwise provided herein, the following procedures shall apply in the event of default.

#### 9.2 Notice, Cure and Remedies

Upon occurrence of a default, the non-defaulting Party shall give the other Party timely written notice of default. The defaulting Party shall have 30 days after the issuance of such notice to cure the default or, for defaults that cannot be cured within such time, to take steps to commence to cure the default and diligently

pursue such cure. If after 30 days the defaulting Party has not cured or commenced efforts to cure the default, the non-defaulting Party may terminate this Attachment 4 or terminate service to the specific DGS/EA Customer Accounts associated with the default, without further notice, or seek any other remedy available under applicable laws and consistent with the terms of this Attachment 4. No waiver by any Party hereto of any default by the other Party in the performance of any of the provisions of this Attachment 4 shall be construed as a waiver of any other default. In the event that the Electric Service Provider shall fail, for any reason, to supply electric Requirements under this Attachment 4, the Electric Service Provider will be solely responsible for payment of any resulting imbalance charges imposed by the ISO or any other charges or penalties that may result from such failure.

### 9.3 Request For Assurances

If at any time the DGS-EA Customer for any reason believes or suspects that the Electric Service Provider may be unable to supply electric services, or in imminent danger of losing its ability to supply electric services according to the terms of this Attachment 4, the DGS-EA Customer may request from the Electric Service Provider a written assurance of its continuing ability to perform. Such request shall be submitted in writing. If the Electric Service Provider does not provide reasonable assurance of its continuing ability to perform within 48 hours of receipt of the DGS-EA Customer's request, the DGS-EA Customer shall have the right to terminate this Attachment 4 without further notice; provided, however, that if the failure to provide assurances is due to the existence of a Force Majeure event, the rights and obligations of the Parties shall be governed by section 11.

## 10. Arbitration

Any dispute or need of interpretation arising out of this Attachment 4 pertaining to the calculation of a termination payment or other payment shall be submitted to binding arbitration by one arbitrator who has not previously been employed by either Party, and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such arbitrator shall either be as mutually agreed by the Parties within thirty days after written notice from either Party requesting arbitration, or failing Attachment 4, shall be selected under the expedited rules of the American Arbitration Association ("AAA").

Arbitrations under this Attachment 4 shall alternate in location between the home offices (or designated field offices) of the Parties, commencing with the DGS/EA Customer's office. The rules of the AAA shall apply to the extent not inconsistent with the rules specified in this Attachment 4. Either Party may initiate arbitration by written notice to the other Party, and the

arbitration shall be conducted according to the following: (a) Not later than seven days prior to the hearing date set by the arbitrator each Party shall submit a brief with a single proposal for settlement; (b) The hearing shall be conducted on a confidential basis; (c) The arbitrator shall be limited to selecting only one of the two proposals submitted by the Parties; and (d) Each Party shall divide equally the cost of the arbitrator and the hearing, and each Party shall be responsible for its own expenses and those of its counsel and representatives.

11. Force Majeure

If either Party is unable as result of Force Majeure to carry out, in whole or in part, its obligations under this Attachment 4, the obligations affected by the Force Majeure shall be suspended to the extent required until the Force Majeure event has been remedied. The Party claiming Force Majeure shall provide notice to the other Party as soon as possible and shall provide a written description of the basis of the claim within 10 days of the event. The Parties shall make reasonable efforts to avoid and/or mitigate the adverse impacts of any Force Majeure event and to resume performance at the earliest opportunity. Disputes regarding the existence of Force Majeure shall be resolved through good faith negotiations between the Parties, or failing such resolution, through the arbitration procedures set forth in section 10. Force Majeure does not affect the obligation to make timely payments for electric services purchased prior to or during the Force Majeure event.

12. Regulatory Change

Should the CPUC, FERC, the California Legislature, or UDC act in a manner that is in conflict with sound business practices, or imposes significant unanticipated risk on either Party to this Attachment 4, or substantially prevents either Party from performing its functions under this Attachment 4, the Parties shall meet and negotiate in good faith an appropriate amendment to this Attachment 4. If the Parties are unable to renegotiate the terms of this Attachment 4 either DGS/EA or the DGS/EA Customer may terminate this Attachment 4 on no less than 90 days notice, provided, however, that if the date the anticipated change is scheduled to take effect less than 90 days from the completion of negotiations, then termination may occur on the day that the change commences. The DGS/EA Customer shall pay for all electric services received prior to termination at the price in effect prior to such termination.

The Parties agree that delay in the full implementation of Direct Access by the ISO, FERC, the CPUC or any other regulatory or judicial entity shall not be considered a regulatory change under this section unless the Parties mutually agree to consider it such.

13. UDC/ISO Emergencies

If an emergency on the system of the UDC or the ISO requires interruption or curtailment of service to the DGS/EA Customer, the Party that first receives notice or otherwise becomes aware

of such emergency shall immediately notify other Party, and following such notice, the Parties' respective obligations to provide and take electric power shall be excused except to the extent that the UDC, ISO or any third party reimburses or is obligated to reimburse the DGS/EA Customer for such failure to deliver electric power. To the extent compensated by the UDC, ISO or third party, the DGS/EA Customer shall compensate the Electric Service Provider for electric power delivered to the ISO or UDC on behalf of the DGS/EA Customer. Each Party will immediately contact the other upon restoration of service. Upon restoration of UDC service, the respective obligations of the Parties shall be in full effect.

14. Assignment

Neither Party shall assign this Attachment 4 or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

15. Integration

Except as provided herein, this Attachment 4 and applicable appendices constitutes the entire Attachment 4 between the Parties. No amendment, modification or change to this Attachment 4 shall be enforceable except by written amendment agreed to and executed by both Parties. No waiver, benefit, privilege or service voluntarily given or performed by either Party shall give the other any contractual right by custom, estoppel, or otherwise.

16. Limitation of Liability

Except as provided herein, the Parties' remedies under this Attachment 4 shall be limited to direct actual damages only. Neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages of any kind.

17. Confidentiality

Except as expressly set forth herein, the Parties agree that this Attachment 4 and all information related to the Attachment 4 are confidential and are not to be disclosed in any manner to any third party other than DGS/EA. This designation shall serve as notice under section 9.2 of the MSA of the confidential nature of the Attachment 4 and related information. In the event that either Party is ordered by a court or other governmental authority to produce or disclose any such confidential information, it shall promptly notify the other Party and provide sufficient time for the other Party to seek injunctive relief from such order prior to any production or disclosure.

18. Notices

All notices to the DGS/EA Customer should be sent to: Gary G. Phelps  
City of Redlands  
P.O. Box 3005  
Redlands CA 92373

Urgent information should be communicated to Gary G. Phelps through one of the following means:

Telephone: (909) 798-7698  
Fax: (909) 798-7670  
Email: [mutilities@eee.org](mailto:mutilities@eee.org)

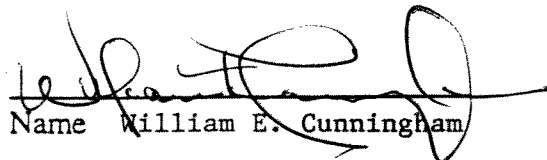
All notices to the Electric Service Provider should be sent to:

IN WITNESS WHEREOF, the Electric Service Provider and DGS/EA Customer have caused this Attachment 4 to be duly executed by their duly authorized representatives on the date indicated. This Attachment 4 shall not become effective as to either Party unless and until executed by both Parties.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Electric Service Provider

  
Name William E. Cunningham

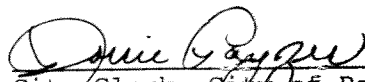
\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Title

City of Redlands  
35 Cajon Street  
Redlands, California

\_\_\_\_\_  
Organization (DGS/EA Customer)

ATTEST:

  
\_\_\_\_\_  
City Clerk, City of Redlands

