



**RESOLUTION NO. 14-\_\_\_\_\_**

**WHEREAS**, the City of Huntsville, Alabama (hereinafter referred to as Distributor), and Tennessee Valley Authority (hereinafter referred to as TVA), did heretofore enter into a contract dated May 26, 1980 (which contract, as amended and supplemented, is hereinafter called the Power Contract); and

**WHEREAS**, TVA and Distributor have entered into a Direct Load Control Agreement, dated October 1, 1997, covering arrangements which allow cooperation in direct load control activities to support TVA's peak load reduction efforts (Cycle and Save Program); and

**WHEREAS**, under the Cycle and Save Program, TVA provides a credit to Distributor's wholesale power bill for the equipment controlled in accordance with the 1997 Agreement; and

**WHEREAS**, TVA wishes to terminate the Cycle and Save Program, and Distributor is willing to accept a lump-sum payment in lieu of continuing obligations of the parties under the 1997 Agreement; and

**WHEREAS**, there is now presented to the City Council of the City of Huntsville, Alabama, an agreement terminating the Cycle and Save Program to be effective upon the date executed by TVA, with the representation that the said agreement has been approved by the Huntsville Electric Utility Board.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that it does approve the aforesaid termination of the Cycle and Save Program, and Tommy Battle, as Mayor of the City of Huntsville, Alabama, be, and he is authorized to execute said agreement for and on behalf of the City of Huntsville, Alabama, and the Clerk-Treasurer be and he is hereby authorized to attest the same and to affix thereto the seal of the City of Huntsville, Alabama, all in as many counterparts as may be necessary.

**BE IT FURTHER RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an agreement by and between the City of Huntsville and the Tennessee Valley Authority on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Amendatory Agreement Between City of Huntsville, Alabama and Tennessee Valley Authority," consisting of seven (7) pages and the date of \_\_\_\_\_, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
President of the City Council of  
The City of Huntsville, Alabama

**APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama



Tennessee Valley Authority, 4960 Corporate Drive, Suite 125, Huntsville, Alabama 35805

April 28, 2014

Mr. William C. Pippin  
President and CEO  
Huntsville Utilities  
Post Office Box 2048  
Huntsville, Alabama 35804-2048

Dear Bill,

Attached for your review and execution are three copies of a proposed agreement covering arrangements for terminating the Cycle and Save Program Agreement and to provide a buyout payment for the termination.

Upon your execution, please return all three originals to me for further handling by TVA. Two fully executed originals will be returned to you for your files.

If you have any questions concerning the enclosed agreement, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Kevin".

Kevin Chandler  
General Manager

**AMENDATORY AGREEMENT**  
**Between**  
**CITY OF HUNTSVILLE, ALABAMA**  
**And**  
**TENNESSEE VALLEY AUTHORITY**

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

Contract No. 98PCG231566, Supp. No. 1  
Purchase Order No. 677232

THIS AGREEMENT, made and entered into between the CITY OF HUNTSVILLE, ALABAMA (Distributor), a municipal corporation created and existing under and by virtue of the laws of the State of Alabama, and TENNESSEE VALLEY AUTHORITY (TVA), a corporation created and existing under and by virtue of the Tennessee Valley Authority Act of 1933, as amended (TVA Act);

**W I T N E S S E T H:**

WHEREAS, Distributor and TVA have heretofore entered into a power contract dated May 26, 1980, as amended (Power Contract), under which Distributor purchases its entire requirements for electric power and energy from TVA for resale; and

WHEREAS, TVA and Distributor have entered into a Direct Load Control Agreement, Contract No. 98PCG231566, dated October 1, 1997 (1997 Agreement), covering arrangements for TVA and Distributor to cooperate in direct load control (DLC) activities to support TVA's peak load reduction efforts (Cycle and Save Program); and

WHEREAS, under the Cycle and Save Program, TVA provides a credit to Distributor's wholesale power bill for the equipment controlled in accordance with the 1997 Agreement; and

WHEREAS, TVA desires to terminate the Cycle and Save Program and Distributor is willing to accept a lump-sum payment in lieu of continuing obligations of the parties under the 1997 Agreement; and

WHEREAS, TVA and Distributor wish to amend their continuing obligations under the 1997 Agreement to provide for such changes;

NOW, THEREFORE, for and in consideration of the premises and of the agreements set forth below, and subject to the provisions of the TVA Act, the parties agree as follows:

**SECTION 1 - TERMINATION OF 1997 AGREEMENT**

Subject to the provisions of this agreement, the 1997 Agreement is hereby terminated as of the date first above written.

## **SECTION 2 - TERMS DEFINED UNDER THE 1997 AGREEMENT**

Capitalized terms not otherwise defined under this agreement shall have the same meaning as defined under the 1997 Agreement.

## **SECTION 3 - EARLY TERMINATION COMPENSATION**

TVA shall, in lieu of its obligations under the 1997 Agreement, pay Distributor an amount (Buyout Payment) in accordance with Section 4 below. Such obligations include, but are not limited to, application of the Wholesale Credit to Distributor's wholesale bill for the Equipment controlled under the 1997 Agreement. Upon disbursement of the Buyout Payment by TVA, Distributor shall not be entitled to participate in any new DLC pilot developed to replace the Cycle and Save Program. However, if such new DLC pilot is proven successful and TVA makes a new DLC program available, Distributor may participate in that program in accordance with the program's terms and conditions.

## **SECTION 4 - DETERMINATION OF BUYOUT PAYMENT**

The number of Switches for which Distributor received credits under the 1997 Agreement on its June 2013 wholesale power bill shall be used for determining the Buyout Payment. According to such wholesale power bill, TVA has applied a Wholesale Credit for a total of 3,284 Switches (1,914 Standard Water Heater Switches and 1,370 Air-Conditioning Unit Switches). The Buyout Credit shall be equal to \$615,578.00.

## **SECTION 5 - DISBURSEMENT OF BUYOUT PAYMENT**

Distributor shall invoice TVA for the Buyout Payment. TVA shall provide such Buyout Payment in accordance with the Billing and Payment Terms, attached to and made part of this agreement.

## **SECTION 6 - SATISFACTION AND CONTINUING OBLIGATIONS**

- (a) Notwithstanding the provisions of the 1997 Agreement, including, but not limited to Sections 9.2 and 9.3 of that agreement, and except as provided for under Section 6(b) below, the obligations of the parties shall be deemed to have been fulfilled.
- (b) The obligations that survive the termination of the 1997 Agreement, including without limitation Section 7.1 of the 1997 Agreement, are ratified and confirmed as continuing obligations of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, as of the day and year first above written.

**CITY OF HUNTSVILLE, ALABAMA**

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

**TENNESSEE VALLEY AUTHORITY**

By \_\_\_\_\_  
Senior Manager  
Power Customer Contracts

## **BILLING AND PAYMENT TERMS**

### **(Payments by TVA)**

(11/16/2009 version)

#### **SECTION 1 - DEFINITION OF TERMS**

"TVA" means the Tennessee Valley Authority.

"Reimbursable Contract" means the agreement or contract to which these Billing and Payment Terms are made a part as an attachment or exhibit.

"Billing Party" means the party owed any amount due under the Reimbursable Contract in accordance with these Billing and Payment Terms.

"Billed Party" means the party obligated to pay any amount due under the Reimbursable Contract in accordance with these Billing and Payment Terms. (The same party to the Reimbursable Contract may be the Billing Party or the Billed Party or both.)

"Payment Due Date" means the date by which payment is due the Billing Party as defined in Section 2 below.

"Deliverables" means the work or services performed, or property or equipment furnished, by the Billing Party under the Reimbursable Contract for the ownership benefit of the Billed Party.

#### **SECTION 2 - INVOICING AND PAYMENT DUE DATE**

The Billing Party shall submit an invoice to the Billed Party for the amount due. When TVA is the Billed Party, invoices shall be submitted to TVA Accounts Payable, P.O. Box 15500, Knoxville, Tennessee 37901, or may be submitted electronically to TVA Accounts Payable at [accountspayable@tva.gov](mailto:accountspayable@tva.gov). When TVA is not the Billed Party, the invoice may be submitted in electronic form, if permitted under the Reimbursable Contract. For accounting reference purposes, the invoice shall be numbered and dated and shall include (a) the contract number assigned under Section 11 (**Assignment of Contract Number**) below and (b) reasonably sufficient detail or supporting documentation to permit the Billed Party to verify the appropriateness or accuracy of the amount owed. Unless a later due date is specified in the Reimbursable Contract, the Payment Due Date shall be 30 days from the date of receipt of the invoice. Payment by TVA will be made by electronic fund transfer (after the Billing Party completes a TVA Electronic Vendor Payment Form).

#### **SECTION 3 - INTEREST ON UNDERPAYMENTS OR OVERPAYMENTS**

If the Billed Party fails to pay the amount due by the Payment Due Date, the Billed Party shall pay interest on the unpaid amount based on the maximum rate under the United States Prompt Payment Act, (31 U.S.C. §§ 3901-3907) as published in the Federal Register and adjusted periodically (currently semi-annually). Interest shall accrue from the Payment Due Date until the date the Billing Party receives

payment. Failure to pay within 90 days after the Payment Due Date shall constitute a material breach of the Reimbursable Contract. If the Billed Party overpays (such as, due to erroneous or inaccurate invoicing by the Billing Party or due to refund of an excess deposit payment), the Billing Party shall promptly refund the amount overpaid.

#### **SECTION 4 - DELAY OR SUSPENSION OF WORK DUE TO PAYMENT FAILURE**

If the Billed Party fails to pay the amount due by the Payment Due Date, the Billing Party shall have the right to delay or suspend the work or services being performed until after such payment failure has been satisfactorily resolved. Nothing herein contained shall be construed as relieving the Billed Party of the obligation to pay the Billing Party for the work completed as of the date such work or services are delayed or suspended.

#### **SECTION 5 - PAYMENT DISPUTE**

The Billed Party may dispute the payment of all or a portion of the amount due in an invoice if the Billed Party has a reasonable basis to demonstrate that such amount is inappropriate or questionable. In that case, the Billed Party shall promptly advise the Billing Party in writing of the reasons for disputing all or a portion of the invoiced amount. Upon receipt of the Billed Party's written statement of reasons, the dispute resolution provisions of Section 12 below shall apply. If as a result of the dispute resolution, one party is required to pay the other for the amount overpaid or underpaid, such amount shall include interest calculated in accordance with Section 3 (**Interest on Underpayments or Overpayments**) above.

#### **SECTION 6 - OFFSET**

Each party reserves the right to offset any amount owed to the other party against any amount owed by the other party.

#### **SECTION 7 - WARRANTIES AND LIMITATION OF LIABILITY**

Unless otherwise provided in the Reimbursable Contract, the Billing Party warrants the Deliverables to be in conformance with generally accepted professional standards prevailing at the time of delivery. Any Deliverables not in accordance with such standards shall be corrected at no cost to the Billed Party as long as such nonconformance is reported in writing within one year from the date of delivery. The Billing Party expressly disclaims any other warranties, including implied warranties of merchantability or fitness for any particular use or purpose, as to any Deliverables provided hereunder.

#### **SECTION 8 - TIME OF COMPLETION AND FORCE MAJEURE**

Any delays in or failure of performance by the Billing Party or its contractors shall not constitute default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of Billing Party or its contractors, and Billing Party shall not be liable for any loss or damage due to or arising out of any such delays or failure of performance. Such occurrences include, but are not limited to, acts of God or the public enemy, fires,

epidemics, quarantines, strikes, freight embargoes or delays in transportation, priorities or other acts or orders of Governmental authority, or unforeseeable severe weather or floods, or any causes, whether or not of the same class or kind of those specifically above named, which are not within the control of Billing Party or its contractors.

#### **SECTION 9 - ACCESS TO BILLING RECORDS AND CONFIDENTIALITY**

Upon written request by the Billed Party, the Billing Party shall provide access during normal working hours to its records as necessary to permit the Billed Party to verify the accuracy or appropriateness of the invoice. The Billed Party shall keep the information examined confidential. If a billing dispute is submitted to dispute resolution as set out in Section 12 below, the Billing Party agrees to provide the pertinent records or information to counsel and independent experts of the Billed Party and those attempting to resolve the dispute, provided such third parties agree to keep such records or information confidential. Nothing in this Section shall be construed as in any way impairing the ability pursuant to statutory authority of the Office of the Inspector General of TVA or of any other Federal agency having auditing jurisdiction over TVA to examine the records of the Billing Party to the extent relating to any amount billed TVA by the Billing Party.

#### **SECTION 10 - ENTIRE CONTRACT**

The Reimbursable Contract and all exhibits or attachments thereto (including these Billing and Payment Terms) shall constitute the entire agreement between the parties. In the event of any conflict between the provisions of the Reimbursable Contract and these Billing and Payment Terms, the Reimbursable Contract shall prevail.

#### **SECTION 11 - ASSIGNMENT OF CONTRACT NUMBER**

The Reimbursable Contract will have a contract number assigned by TVA for all parties to use as a reference as part of the invoicing and payment processes.

#### **SECTION 12 - DISPUTE RESOLUTION**

If a billing amount dispute arises out of or relates to the Reimbursable Contract, including these Billing and Payment Terms, or the breach thereof, the parties agree to use their best efforts to resolve such a dispute informally at the lowest possible levels of decisionmaking. Such a dispute not resolved at the working level should be referred to higher levels of management of both parties for consideration, as necessary. If said dispute cannot be so settled, the parties further agree to develop and use consensual alternative dispute resolution processes, such as facilitation and mediation to try in good faith to settle said dispute, before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may, for example, try to resolve the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules.

### **SECTION 13 - RESTRICTION OF BENEFITS**

No member of or delegate to Congress or Resident Commissioner, or any officer, employee, special Government employee, or agent of TVA shall be admitted to any share or part of the Reimbursable Contract or to any benefit that may arise from it unless the agreement be made with a corporation for its general benefit. The other party to the Reimbursable Contract shall not offer or give, directly or indirectly, to any officer, employee, special Government employee, or agent of TVA any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, except as provided in 5 C.F.R. part 2635 (as amended, supplemented, or replaced). Breach of this provision shall constitute a material breach of the Reimbursable Contract.

### **SECTION 14 - CONFORMANCE WITH WORK SCOPE AND COST ESTIMATE**

It is recognized that depending on the nature or extent of the work involved, the Reimbursable Contract may include a detailed work scope and a cost estimate (or cost limitation) for work subject to reimbursement based on actual costs incurred. In that case, the Billing Party shall use its best efforts to perform the work within the specified work scope and cost estimate. If at any time the Billing Party becomes aware that the actual costs will likely exceed the cost estimate by 15 percent or more, the Billing Party shall use its best efforts to obtain concurrence or resolution with the Billed Party regarding such cost estimate overrun. This shall include notification of the Billed Party in writing of the cost estimate overrun together with a revised cost estimate and an explanation for the cost estimate overrun so as to provide the Billed Party an opportunity for input and/or consultation. For work or services in excess of the work scope, unless mutually agreed by the parties in advance (such as in the form of an amendment to the Reimbursable Contract), the Billing Party shall not be obligated to perform such work or services, and the Billed Party shall not be obligated to pay for such work or services. The Billing Party may elect to suspend the work in question until it has obtained concurrence or resolution with the Billed Party regarding work in excess of the work scope and/or cost estimate.