

CITY OF WILLIAMS CITY COUNCIL

**REGULAR MEETING
APRIL 28, 2022
7:00 P.M.**

**CITY COUNCIL CHAMBERS
113 S. FIRST STREET
WILLIAMS, ARIZONA**

AGENDA ADDENDUM

**PLEASE HELP THE CITY IN FOLLOWING THE CDC'S GUIDELINES BY LIMITING
YOUR EXPOSURE.**

PURSUANT TO A.R.S. #38-431.02, NOTICE IS HEREBY GIVEN TO THE MEMBERS OF THE CITY COUNCIL AND THE GENERAL PUBLIC THAT THE CITY COUNCIL WILL HOLD A MEETING OPEN TO THE PUBLIC **THURSDAY, APRIL 28, 2022, AT 7:00 P.M.** IN THE CITY COUNCIL CHAMBERS, 113 S. FIRST STREET, WILLIAMS, ARIZONA. THE COUNCIL MAY, BY MOTION, RECESS INTO EXECUTIVE SESSION FOR (A) LEGAL ADVICE IN ACCORDANCE WITH A.R.S. §38-431.03(A)(3), OR (B) DISCUSSION OR CONSIDERATION OF RECORDS EXEMPT BY LAW FROM PUBLIC INSPECTION IN ACCORDANCE WITH A.R.S. §38-431.03(A)(2), TO DISCUSS AND CONSIDER ANY ITEM CONTAINED IN THIS AGENDA. THE COUNCIL WILL DISCUSS AND MAY TAKE ACTION ON THE FOLLOWING MATTERS:

I. PROCEDURES

- A. Call to Order
- B. Pledge of Allegiance and Invocation
- C. Roll Call
 - _____ Mayor Moore
 - _____ Vice-Mayor Dent
 - _____ Councilmember Fritsinger
 - _____ Councilmember McNelly
 - _____ Councilmember Cowen
 - _____ Councilmember Hiemenz
 - _____ Councilmember Payne
- D. Approval of Minutes for April 14, 2022
- E. Adopt Agenda

II. PRESENTATIONS – Heather Herman from Front Burner Media is here to present an update to Council.

III. PUBLIC PARTICIPATION

The Council cannot act upon items presented during the public participation portion of the agenda. Individual Council members may ask the public questions or may respond to any criticisms. Still, the open meeting law prohibits the members from discussing or considering the items among themselves until the matter is officially placed on the agenda. However, the open meeting law allows the City Council to ask staff to review a case or place it on a future Council agenda. A person has a five-minute time period to speak. If a person has a written presentation that requires more than five minutes to present verbally, they should indicate the estimated time required on the sign-up sheet. The presiding officer may grant additional time if the agenda for the meeting is not too full. A registered spokesperson for a recognized community organization shall be afforded ten minutes, provided other members of the same organization agree beforehand to withhold their comments on the same subject.

Certification of Posting

The undersigned hereby certifies that a copy of this notice was duly posted at Williams City Hall interior board and exterior board in accordance with the statement filed by the City Council with the City Clerk.

Date: _____ Time: Before 5 p.m. By: _____
City Clerk Pamela Galvan

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**AGENDA
ADDENDUM**

IV. CONSENT AGENDA ITEMS – None

V. NON-CONSENT AGENDA ITEMS

- A. Consideration and second reading of Ord No. 990 regarding fiber optic and internet service in Williams.
- B. Consideration and action of Resolution No 1418 to correct previously adopted Resolution No 1417.
- C. Consideration and action regarding approval of a #12 Restaurant liquor license for Patrick Follett, agent for Canyon Coasters Williams Adventure Park, located at 700 E. Route 66.
- D. Consideration and action with the City's electric rate increase.
- E. Consideration and action with Resolution No. 1419 regarding execution and delivery of the SPPA Project Contract No. 2012-2 (Power Purchase Agreement). *J Woner of KR Saline*
- F. Consideration and action with Resolution No. 1420 regarding execution and delivery of the Box Canyon Resale Agreement. *J Woner of KR Saline*
- G. Consideration and action with Resolution No. 1421 regarding the execution and delivery of the Fourth Amendment to the Administration and Scheduling Agreement and the Second Amendment to the Amended and Restated Power Purchase Agreement. *J Woner*
- H. Consideration and action with Resolution No. 1422 regarding the appointment of Tim Pettit as Williams designated director for SPPA and Julie Walker as the alternate director for the Southwest Public Power Agency, Inc.
- I. Consideration and action regarding the continuation or discontinuance of COVID pay.
- J. Consideration and action with Airport Helipad and Taxiway A Sections 10, 1 inch AC Overlay and Pavement Markings.

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VI. REPORTS, CURRENT EVENTS, AND INFORMATION ITEMS

Mayor and Council

Staff

VII. ADJOURN

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CITY OF WILLIAMS CITY COUNCIL

ANNOTATED MINUTES
AGENDA ITEM

PAGE 1

APRIL 14, 2021
COUNCIL ACTION

I. PROCEDURES

A. Call to Order 7:01 PM

Mayor Moore called the meeting to order.

B. Pledge of Allegiance and Invocation

The pledge of allegiance was recited, and Kerry-Lynn Moede provided the invocation.

C. Roll Call

Present: Mayor Moore, Vice-Mayor Don Dent, Councilmember Mike Cowen, Councilmember Craig Fritsinger, Councilmember Bernie Hiemenz, Councilmember Frank McNelly, and Councilmember Lee Payne

Present from City Staff, City Manager Tim Pettit, Finance Director Barbara Bell, Police Chief Tad Wygal, and City Clerk/HR Director Pamela Galvan.

D. Approval of Minutes for March 24, 2022.

Motion: *To approve the Minutes for March 24, 2022.*

Action: *Approved*

Moved by *Councilmember Fritsinger*, **Seconded by** *Councilmember Hiemenz*

Motion passed unanimously.

E. Adopt Agenda

Motion: *To approve the agenda as presented.*

Action: *Adopted*

Moved by *Councilmember Payne*, **Seconded by** *Vice Mayor Dent*

Motion passed unanimously.

II. PRESENTATIONS –None

III. PUBLIC PARTICIPATION – None

IV. CONSENT AGENDA ITEMS –

A. Purchase Orders

CITY OF WILLIAMS CITY COUNCIL

ANNOTATED MINUTES
AGENDA ITEM

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APRIL 14, 2021
COUNCIL ACTION

B. Approval of check register for the month ending March 31, 2022.

Motion: To approve the consent agenda items with research first into the PO for Sojern at \$25,000.00.

Action: Approved

Moved by Councilmember McNelly, **Seconded by** Councilmember Fritsinger

Motion passed unanimously

V. NON-CONSENT AGENDA ITEMS

C. Consideration and first reading of Ord No. 990 regarding fiber optics and internet services in Williams.

The City Clerk provided the first reading of Ordinance No 990.

Recess to Public Hearing 7:10

Council invites the public input on the electric rate fee increases.

Mayor invited the public twice for input; none was provided.

Reconvene to Regular Meeting 7:11

D. Consideration and action regarding suggested electric rate fee increase. J Woner of KR Saline

KR Saline is recommending we adopt the power cost adjuster to be the same as the July rate change.

The rates will be reviewed each year and either adjusted or may go unchanged depending on power costs.

4% across the board KR Saline suggested will barely keep us even; it doesn't account for other cost increases on transformers etc.

Council is discussing 4% for residential and 6% for commercial and will look at it next year.

They discussed what might happen if there were a spike in costs and our ability to adjust at any time to compensate.

CITY OF WILLIAMS CITY COUNCIL

ANNOTATED MINUTES
AGENDA ITEM

PAGE 3

APRIL 14, 2021
COUNCIL ACTION

KR Saline also recommends increasing our wheeling rate by .0334kwhr, which we charge APS for pass-through. That rate has not been changed for some time now.

Councilmember Cowen provides the public with the history of the City's purchasing its own electric service 30 years ago and where we are today regarding costs, growth, and quality of life for the community. This is all about keeping up with costs and the maintenance of our system.

Motion: *To increase the residential electric rate to 4%, Commercial to 6% effective July 1, 2022. We adopt the power cost adjuster and increase the wheeling rate charged to APS for distribution service loads to .0334kwhr and continue with required services.*

Action: *Approved*

Moved by *Vice Mayor Dent, Seconded by Councilmember Hiemenz.*

Roll Call Vote:

Vice Mayor Dent	Yes	Councilmember Hiemenz	Yes
Councilmember Cowen	Yes	Councilmember Fritsinger	Yes
Councilmember McNelly	Yes	Councilmember Payne	Yes

Motion passed unanimously

If the Mayor were voting, his vote would be yes.

E. Consideration and action regarding the Sweetwater well pump and the need to change pipe size. P Carpenter

Mayor provided the background. It is based on the consultant's recommendation and having run a camera down the hole that we need to use a different pipe at the cost of \$52,410.00. He has spoken with the city manager, and he agrees.

Mayor recommends we approve and move on with it.

Pat Carpenter clarified that it is the pump motor and the seal, not the pipe.

Motion: *To approve the fiscal impact of \$52,410.00 for modifications to the Sweetwater well.*

Action: *Approved*

Moved by *Councilmember Payne, Seconded by Councilmember Fritsinger.*

CITY OF WILLIAMS CITY COUNCIL

**ANNOTATED MINUTES
AGENDA ITEM**

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**APRIL 14, 2021
COUNCIL ACTION**

Motion passed unanimously

VI. REPORTS, CURRENT EVENTS, AND INFORMATION ITEMS

Mayor and Council

- Mayor has requested staff to look into obtaining estimates to repair the east end of town this Spring, even if we have to cut other street projects to get it done. Aaron Anderson stated he has the costs to repair the street.

Staff *None*

VII. ADJOURN – 7:35 PM

Mayor John W. Moore

ATTEST:

City Clerk Pamela Galvan

CITY OF WILLIAMS CITY COUNCIL

**ANNOTATED MINUTES
AGENDA ITEM**

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**APRIL 14, 2021
COUNCIL ACTION**

CERTIFICATION

State of Arizona,)
) ss.
Coconino County,)

I, PAMELA GALVAN, do hereby certify that I am the City Clerk of the City of Williams, County of Coconino, State of Arizona and that the above Minutes are a true and correct summary of the Meeting of the Council of the City of Williams held on April 14, 2022. I further certify that the Meeting was duly called and held and that a quorum was present.

Dated this 18th day of April 2022.

City Clerk Pamela Galvan

ORDINANCE NO. 990

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF WILLIAMS ARIZONA, AMENDING CHAPTER 115 BY THE ADDITION OF SECTION §115.04, GRANTING THE NONEXCLUSIVE TELECOMMUNICATIONS SYSTEM LICENSE TO USE, OPERATE, MAINTAIN, CONSTRUCT AND INSTALL, CABLES, CONDUIT, APPURTENANCES, AND RELATED FACILITIES, COLLECTIVELY KNOWN AS A “NETWORK” IN, UNDER, ALONG, OVER AND ACROSS THE PUBLIC RIGHTS-OF-WAY AND EASEMENTS OF THE CITY OF WILLIAMS.

WHEREAS, the City of Williams has authority pursuant to A.R.S. § 9-501 and A.R.S. § 9-581 *et. seq.*, to issue licenses to use the public rights-of-way and easements within the City for a telecommunications system; and

WHEREAS, Licensee has applied to the City of Williams for a license for the use, installation, placement, operation, and maintenance of wireless communications facilities in, on, under, upon, along, and across certain public rights-of-way and easements within the City of Williams; and

WHEREAS, the issuance of such a Telecommunications System License to Licensee will benefit residents of the City of Williams;

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLIAMS, AS FOLLOWS:

1. **LICENSE GRANTED.**

1.1 **License Area.** There is hereby granted by the City to Licensee a revocable, non-exclusive license to use, construct, install, operate and maintain a telecommunication system network, including all necessary cables, conduit, appurtenances, and related facilities (collectively referred to herein as “Network”) in, under, along, over and across the public rights-of-way and easements of the City of Williams as depicted in the attached **Exhibit A**, which is attached hereto and incorporated herein by this reference, subject to the terms and conditions of this License, the Williams Municipal Code and any amendments thereto, the City’s police powers and taxing authority, together with all applicable federal and state laws and regulations. For the purpose of this License, the Network does not include a cable system, open video system, or any other system providing multichannel video service, all as defined in Title VI of the Federal Communications Act of 1934. This is not a business license, zoning approval, nor is it a permit to engage in construction activities in the right-of-way of the City. Any such business license, zoning approval, and construction permit must be obtained separately from the City. Licensee must obtain zoning approval under the Williams Municipal Code and any work in the public right-of-way must be permitted under the Williams Municipal Code, as may be amended from time to time. This License does not authorize the construction or placement of any poles in the public rights-of-way.

1.2 Others' Facilities. Licensee may use or lease facilities of other persons as part of its Network, provided, however, that such facilities are lawfully constructed, installed, operated, and maintained in the public rights-of-way in compliance with the Williams Municipal Code, state law, and any other applicable laws. Licensee shall provide the City with the current name of the person and responsible officer thereof, local business address, and telephone number, and a general description and location of the other persons' facilities that will be used as part of the Licensee's Network. Nothing herein shall be construed to grant any person other than Licensee a telecommunications or fiber optics communications system license.

1.3. Service Routes. Licensee's Service Routes shall consist of those routes identified in **Exhibit A**. Licensee may construct a Network including facilities, cables, and appurtenances along the Routes generally depicted in **Exhibit A**, and as will be more specifically depicted on Construction and As-Built Drawings provided to the City by Licensee.

1.4. Expanded Service Routes. At any time during the term of this License, Licensee may apply to the City Engineer and having complied with the terms and conditions of this License and having received City Engineer's or City Managers approval, which shall not be unreasonably withheld or delayed, Licensee may expand or extend (construct, install, upgrade and operate) its Network within the City of Williams. Any expansions or extensions shall be at all times governed by the terms and conditions of this License. Licensee shall immediately prepare a new Exhibit A to this License showing all service routes, including the expansions, which shall be attached to this License and replace the existing Exhibit A, upon receiving the City Engineer's approval of the new routes.

1.5 Inter-State Services. If in the future, Licensee offers inter-state services in the City of Williams, this License will automatically be converted to a dual license for an inter-state and intra-state telecommunications network. In that event, the parties agree that the City may amend the License as may be permitted by and consistent with state laws and City ordinances, following good faith negotiations with Licensee, within a reasonable time. Licensee shall notify the City at least one hundred twenty (120) days before commencement of offering inter-state telecommunications services in the City of Williams.

2. CONDITIONS RELATED TO MANAGEMENT OF PUBLIC RIGHTS-OF-WAY AND EASEMENTS.

2.1 Williams Rights-of-Way Regulations. Licensee shall comply with all requirements of the Williams Municipal Code, as may be amended from time to time, and any other ordinances related to work in the public rights-of-way and easements, in addition to all terms and conditions of this License.

2.2 Plans; Construction Schedule. Construction of the Initial Service Routes shall commence within twelve (12) months from the effective date of this License. Plans and Construction schedules shall be addressed as required under the Williams Municipal Code.

2.3 Underground Installation. Except as otherwise provided herein or permitted by the City, all of the Licensee's networks within the City shall be underground and shall meet the standard specifications and reasonable requirements of the City.

2.4. Coordination of Underground Installation. Licensee shall coordinate its installations with developers and other utilities to install facilities underground in a common trench and at the same time, per Williams Municipal Code. All installations shall be in conduit approved by the City Engineer. Any expenses for trenching or conduit other than that required for Licensee's use will be shared pro-rata among all parties located in the trench or conduit, with payment and other terms and conditions of said joint occupancy to be agreed upon by the parties.

2.5. Reimbursement for Reduction in Service Life. Upon completion of construction and prior to the release of any performance bond posted for construction purposes, Licensee agrees to reimburse the City for all reasonable costs arising from the reduction in the service life of any public road, resulting from pavement cuts of the Licensee considering the criteria set forth in the Williams Municipal Code is amended to require such reimbursement.

2.6. Arizona 811 (Blue Stake); As-Built Drawings; Local Agent. Licensee shall participate as a member of Arizona Blue Stake Center and other organizations to assist with the proper location and identification of its underground facilities and shall comply with Arizona Revised Statutes Section 40-360.21 et. seq. Licensee shall maintain As-Built Drawings of its facilities located within the public rights-of-way and easements of the City, and furnish a copy of the same to the City upon request. Licensee shall maintain a local agent within Coconino County, who is familiar with Licensee's facilities and is able to assist the City and others using the public rights-of-way and easements in obtaining accurate information regarding Licensee's facilities.

2.7. Electronic Mapping. (Reserved)

2.8. Emergencies.

2.8.1 In case of a public emergency posing an immediate threat to the lives or property of City residents, City reserves the right to perform work in the public rights-of-way and easements, which work may damage or destroy Licensee's facilities, without any prior notice to Licensee, if such action is deemed reasonably necessary by the City Manager, Fire Chief, Police Chief, City Engineer,

Public Works Director, and/or any of their designees. Licensee shall be responsible for costs of repair of any of its facilities damaged in such an emergency event. If Licensee is required to make repairs of an emergency nature, Licensee will notify the city prior to such repairs, if practicable, and will obtain necessary permits in a reasonable time after notification.

2.8.2 A public emergency shall be any condition which, in the opinion of any of the officials named in Paragraph 2.8.1, poses an immediate threat to the lives or property of any person in the City, caused by any natural or man-made disaster, including, but not limited to storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills.

3. PERFORMANCE BOND.

3.1 At least thirty (30) days before commencing any construction work under this License, the Licensee shall post a performance bond in the amount of \$ _____ in favor of the City as security for the Licensee's faithful performance of all provisions of this License, including but not limited to the payment of any claims, liens, taxes due, penalties, cost of removal or abandonment of any property by Licensee. This bond shall remain in effect during the construction of the Licensee's Initial Service Routes. After completion of the Initial Service Routes, upon written approval of the City, provided there are no outstanding claims against Licensee resulting from said construction, the Licensee may replace the bond in the amount of \$ _____ with a bond in the amount of \$ _____ as security for the Licensee's faithful performance of all provisions of this License, including but not limited to the payment of any claims, liens, taxes due, penalties, cost of removal or abandonment of any property by Licensee. The city may request an additional bond in the same or greater amount during construction by Licensee in the Expanded Service Routes. Upon written approval of the City, the performance bond may be canceled no later than ninety (90) days after the expiration of the term of this License, provided there is no outstanding default on the part of the Licensee.

3.2 City may draw upon the performance bond if, after giving Licensee thirty (30) days' notice and an opportunity to cure any default under this License, Licensee fails to cure any default. Within thirty (30) days after notice to Licensee that any amount has been withdrawn from the bond, Licensee shall restore the bond to its initial amount. A performance bond shall not be construed to limit the liability of the Licensee.

4. INSURANCE.

4.1 Minimum Insurance. Licensee shall at all times during the term hereof, at its own cost and expense, carry and maintain, for the mutual benefit of the City and Licensee, the following minimum insurance:

4.1.1. Commercial General Liability. Commercial general liability insurance with an unimpaired limit of One Million Dollars (\$1,000,000) for each occurrence and a One Million Dollar (\$1,000,000) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an "insured contract" including this License. The policy will cover the Licensee's liability under the indemnity provisions of this License. The protection under the policy shall at a minimum meet or exceed Insurance Service Office, Inc. Form CG 00 01 10 93. (The policy does contain a "separation of insureds" clause.)

4.1.2. Automobile Liability. Commercial business automobile liability insurance with a limit of One Million Dollars (\$1,000,000) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with the Licensee's use of the License Area. Coverage must be at least as broad as Insurance Service Office, Inc. Policy Form CA00 01 12 93. (Such insurance does cover hazards of a motor vehicle used for loading and off-loading.)

4.1.3. Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of Five Hundred Thousand Dollars (\$500,000) for each employee, One Million Dollars (\$1,000,000) policy limit.

4.1.4. Other Insurance. Any other insurance City may reasonably require before approval and related to the construction of any Expanded Service Routes for the protection of City and City's agents, officials, representatives, officers, directors, and employees (collectively "Additional Insureds"), the License Area, surrounding property, Licensee, or the activities carried on or about the License Area. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying, or operating similar facilities could reasonably purchase.

4.2 Form of Insurance. All insurance policies shall meet the following requirements:

4.2.1. All policies except workers' compensation must name the City, its agents, officials, representatives, officers, and employees as Additional Insureds. Licensee shall cause coverage for Additional Insureds to be incorporated into each insurance policy via endorsement equivalent to Insurance Services Office, Inc. Commercial General Liability Additional Insured, Form B. The city may give the Licensee notice of City's election from time to time that any or all the Additional Insureds not be named as Additional Insureds with respect to specific insurance coverages.

4.2.2. All policies must provide City with thirty (30) days prior notice of any cancellation, reduction, or other change in coverage.

4.2.3. All policies shall require that notices be given to City as provided for notices to City under this License.

4.2.4. The insurer's duty to notify the City of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives."

4.2.5. All policies must clearly show, by formal endorsement or otherwise, that all coverage required by this License is provided.

4.2.6. All insurance policies shall contain a waiver of any transfer rights of recovery (subrogation) against City and all other Additional Insureds. No deductible or "self-insured" amount shall exceed Two Hundred Fifty Thousand Dollars (\$250,000). Licensee shall be solely responsible for any self-insurance amount of deductible. The city may require Licensee from time to time to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

4.3. Insurance Certificates. Licensee shall evidence all insurance by furnishing to City certificates of insurance. Certificates must evidence that the policy referenced by the certificate is in full force and effect and that the policy satisfies each requirement of this License applicable to the policy. For example, certificates must indicate that City and the other Additional Insureds are additional insureds. Certificates must be in a form acceptable to the city. All certificates are in addition to the actual policies and endorsements required. The licensee shall provide City with a renewal certificate of the required insurance coverage at least ten (10) days prior to any expiration date.

4.4. Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to the City. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurers) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of A IX, and all insurance maintain a rating of A-.

4.5. Primary Insurance. Licensee's insurance shall be the primary insurance. Any insurance or self-insurance maintained by the City shall not contribute to Licensee's insurance.

4.6. Insurance to be provided by others. Any contractors or other persons occupying, working on or about, or using the License Area pursuant to this License must also provide for the protection of the City and all other Additional

Insureds and maintain in effect all of the insurance and indemnification required by this License.

5. INDEMNIFICATION.

5.1. Indemnity. In addition to all other obligations hereunder, to the full extent permitted by law, throughout the term of this License and until all obligations and performances under or related to this License are satisfied and all matters described in this paragraph are completely resolved, Licensee and all other persons using, acting, working or claiming through or for Licensee or this License shall jointly and severally pay, indemnify, defend and hold harmless City and all other Additional Insureds from and against any and all claims or harm resulting from Licensee's acts or omissions related to its use of the License Area and this License. Without limitation, such claims include any and all allegations, demands, proceedings, liabilities, obligations, suits, actions, claims (including without limitation, claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all reasonable attorney fees, court costs, and the cost of appellate proceedings) which may arise out of any use by Licensee of the License Area or City's property related to this License or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this License, including any injury or damages or cause claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the License Area or surrounding areas related to this License except to the extent such claims, liability, harm or damages are caused by City or any other Additional Insured.

5.2 City expressly disclaims any representation that required insurance is adequate to protect any person or property against any risks related to the License Area. Licensee's obligations to indemnify do not diminish in any way Licensee's obligations to insure, and Licensee's obligations to insure do not diminish in any way Licensee's obligations to indemnify. Licensee's obligations to indemnify and provide insurance are in addition to and do not limit, any and all other liabilities or obligations of Licensee under or connected with this License.

5.3 The indemnity obligations of this License shall survive any termination or expiration of this License.

6. RISK OF LOSS.

The city is not required to carry any insurance covering or affecting the License Area or use of the City's property related to this License. Licensee assumes the risk of any and all loss, damage, or claims related to Licensee's use of the Licensed Area or City's or Licensee's property throughout the term hereof, except as set forth in Paragraph 5. Nothing herein shall be construed to waive any of the Licensee's rights to pursue claims against third parties.

7. INSPECTION OF RECORDS.

Licensee's books and records relevant to this License shall be subject to inspection by duly authorized officers or representatives of the City at reasonable times.

8. COMPENSATION.

8.1 Costs. Pursuant to §153.04 Fiber Optic Internet Franchise, of the Williams Municipal Code, Licensee shall pay an application fee of \$2500.00 payable in cash, certified or cashier's check, wire transfer, or any other method acceptable to the City Manager, in addition to all other fees and amounts the City is permitted by law to charge for or related to this License, including without limitation, lawful right of way permit fees, and reasonable costs associated with restoration of damage caused to public rights-of-ways and easements. The parties recognize that new services and technology are evolving rapidly. In the event that in the future Licensee desires to offer services over its Network not defined as "telecommunications" under A.R.S. § 9-581 *et. seq.*, Licensee agrees to pay for use of the public rights-of-way and easements owned by the City to the extent allowed by law and the parties agree to negotiate in good faith to amend this License accordingly. Notwithstanding the above, Licensee shall not be required to pay any fees or costs not assessed against other similar telecommunications companies in the City, consistent with the requirements of the 1996 Telecommunications Act.

8.2 Annual Fee (Intra-state Telecommunications). Licensee shall pay to the City an Annual Fee of \$ _____ per linear foot of trench in the public rights-of-way and/or public utility easements owned by City, in which Licensee has placed facilities ("Lineal Feet") adjusted by the Consumer Price Index ("CPI") as set forth in Paragraph 8.2.3.

8.2.1 The first Annual Fee owed, if any, shall be calculated based on the number of Lineal Feet constructed as part of the Initial Service Routes identified in Exhibit A. Thereafter, the Annual Fee shall be calculated based on the number of Lineal Feet depicted in the As-Built Drawings, including any Expanded Routes, less any distance removed or abandoned during the prior year.

8.2.2 The Annual Fee shall be due and payable within thirty (30) days after the effective date of this License, and on the same date in every year thereafter. If the Annual Fee is not paid on or before the due date, the interest of one percent (1.0%) per month will accrue on the amount due and owing to City.

8.2.3 CPI Adjustment. The charge per Lineal Foot used in calculating the Annual Fee shall be adjusted on July 1st of each year by an amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor

Statistics (Western Region Consumer Price Index ("CPI") for all Urban Customers 1993-1995=100) from the previous year (date of July 1st). In the event that such publication is discontinued, the Parties will agree upon an inflation index that most closely resembles the Western Region CPI.

8.2.4 Auditing. The City shall have the right upon ten (10) days advance notice and during Licensee's normal business hours to inspect the Licensee's records related to this License and shall have the right to audit any amount determined to be payable under Paragraph 8.2, provided, however, that such audit shall take place within 36 months following the date the Annual Fee is due and payable. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Licensee by City, said notice shall include a copy of the audit report; provided, however, that Licensee shall not be required to pay such deficiency until thirty (30) days after completion of an administrative review process agreed upon by the parties or non-binding outside arbitration procedure under Paragraph 19.2.

8.3 Transaction Privilege Taxes. Licensee shall pay all transaction privilege taxes owed to City.

9. TERM OF LICENSE.

The right, privilege, and License granted herein shall continue and exist for a period of ____ () years from the effective date hereof and shall be renewed for an additional term of ____ () years unless sooner terminated under Paragraph 13, below (Termination of License). Renewal shall not be unreasonably withheld or denied by the City.

10. NON-EXCLUSIVE LICENSE.

This License is not exclusive, and shall not be construed to prevent the City from granting other like or similar licenses, grants or privileges to any other person, firm, or corporation, or to deny or lessen the powers and privileges granted City under the Constitution and laws of the State of Arizona.

11. NON-ASSIGNMENT.

11.1. Licensee shall provide City with sixty (60) days prior written notice of any proposed assignment or transfer of this License. This License shall not be assigned or transferred, except upon written consent of the City Council, which consent shall not be unreasonably withheld or delayed; provided, however, that Licensee may assign or transfer the License without such notice or consent to a financially viable parent, subsidiary, successor or affiliate, or a commercial lending institution as security for financing purposes. For purposes of determining whether an assignment or transfer has occurred, a change in ownership of fifty-one percent (51%) of the stock or membership ownership of the Licensee shall constitute an

assignment, and a change in actual working control shall constitute a transfer. In the event of any proposed transfer for which consent of the City Council is required, Licensee agrees to reimburse the City for its reasonable expenses incurred in reviewing such proposed transfer or assignment, which shall not exceed the amount of Two Thousand Five Hundred Dollars (\$2,500).

11.2. The City Council may review the financial and technical abilities of the prospective assignee or transferee to carry out the remaining term of this License.

11.3. Licensee shall provide written notice of any assignment or transfer to the City, which shall include a written acceptance of Licensee's obligations hereunder by the assignee or transferee.

11.4 Licensee may sell, lease, grant an Indefeasible Right to Use ("IRU") or otherwise transfer all or any portion of its Network without consent from the City Council, provided that Licensee remains responsible for all of the terms and conditions of this License for the Network unless and until consent for assignment or transfer from the City Council is obtained.

12. LIQUIDATED DAMAGES.

The city reserves the right, as a condition of any future construction permit issued under the Williams Municipal Code, to require liquidated damages for any delay or non-performance in the construction of the Network where the City Engineer reasonably determines that such penalties are reasonably required to ensure timely performance of construction work. No liquidated damages shall apply in the event of delay or nonperformance caused by an emergency as defined in paragraph 2.8.2.

13. TERMINATION OF LICENSE.

13.1. Grounds for Termination. The License granted hereunder may be terminated prior to its expiration date by the City if the City Council finds that Licensee has failed to comply with the material terms and conditions of this License. Repeated failure and/or unreasonable delay in taking corrective action requested by the city is also grounds for termination of this License.

13.2. Opportunity for Cure. The City Manager or City Engineer will provide Licensee with written notice of any failure to comply with the material terms and conditions of this License, and demand cure of such default. The city may request a cure within a specified reasonable time. If Licensee fails to cure such default within the specified reasonable time or within sixty (60) days when no reasonable time has been specified, the City Manager may place a request for termination of this License upon the next regular City Council meeting agenda for a public hearing on the matter. Following a public hearing, the City Council may

declare the License is terminated for just cause, suspend the operation of the License pending cure, or may set a reasonable period of time for the cure of any default.

14. SERVICE OF NOTICE.

All notices required under this License shall be in writing and will be deemed served when delivered to the persons listed below during ordinary business hours or on the date of delivery when served by U.S. mail, registered or certified return receipt requested, or another person hereafter designated by notice to the other party:

To the Licensee:

With a Copy to:

General Counsel

Right of Way Manager

To the City:

With a Copy to:

City Manager
City of Williams
113 South 1st Street
Williams, AZ 86046

Mangum, Wall, Stoops & Warden
Attn: City Attorney
112 N. Elden Street
Flagstaff, AZ 86001

15. CONDEMNATION BY CITY.

There is hereby reserved to the City the right to acquire the property of the Licensee utilized in the conduct of this License by the exercise of the right of eminent domain in accordance with the conditions set forth in the Arizona Revised Statutes. Nothing herein shall be construed to limit any rights of eminent domain of Licensee.

16. ACCEPTANCE OF LICENSE TERMS AND CONDITIONS.

This License shall become effective when written acceptance thereof has been filed by Licensee with the City Clerk of the City of Williams. By accepting this License, the Licensee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by Williams Municipal and this License.

17. REMOVAL AND RESTORATION OBLIGATIONS RELATING TO ABANDONMENT.

In the event abandonment of Licensee's Facilities or any portion thereof occurs, Licensee shall remove all of the Licensee's Facilities (which may include subgrade facilities and foundations) at the Licensee's sole cost and expense as determined by City. Licensee's removal and restoration obligations under this Section shall occur immediately but in no event later than seven (7) calendar days from the date of abandonment.

18. RECONNECTION.

In the event of an emergency, maintenance, accident, or condition that causes the City to replace or remove a Licensee's Facilities, the Licensee at its sole expense shall be responsible for the reconnection to a utility.

19. REMOVAL OR RELOCATION FOR CITY PROJECT.

Licensee understands and acknowledges that the City may require Licensee to remove or relocate Licensee's Facilities and any portion thereof from the ROW, and Permittee shall, at the City Engineer's direction, remove or relocate the same at Licensee's sole cost and expense, whenever the City Engineer reasonably determines that the relocation or removal is needed for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project. In such a case, the City shall use reasonable efforts to afford Licensee a reasonably equivalent and available alternate location as determined by City. If Licensee fails to remove or relocate the Licensee's Facilities or any portion thereof as requested by the City Engineer within ninety (90) calendar days of Licensee receipt of the request, the City shall be entitled to remove the Licensee's Facilities and any portion thereof at Licensee's sole cost and expense without further notice to Licensee. Licensee shall, within thirty (30) calendar days following issuance of invoice for the same, reimburse the City for the City's actual expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Licensee's Facilities and any portion thereof. In the event the City requires relocation under this Section, the Licensee shall obtain any necessary third-party approvals at its sole cost and expense.

20. REMOVAL OR RELOCATION REQUIRED BY CITY ENGINEER.

At Licensee's sole cost and expense, Licensee shall promptly disconnect, remove, or relocate the applicable Licensee's Facilities and any portion thereof within the time frame and in the manner required by the City Engineer if the City Engineer reasonably determines that the disconnection, removal, or relocation of any part of Licensee's Facilities (a) is necessary to protect the public health, safety, welfare, or City property, (b) Licensee's Facilities or any portion thereof is adversely affecting the proper operation of streetlights or City property, or (c) Licensee fails to obtain all applicable permits, permits, and certifications required

by law relating to its Licensee's Facilities or for any unauthorized facilities or attachments. The failure of the City to act to remove any unauthorized facilities shall not constitute permission or a de facto license in any manner, nor shall subsequent issuance of a license operate retroactively. If the City Engineer reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Licensee's Facilities at the Licensee's sole cost and expense. The City Engineer shall provide to Licensee thirty (30) calendar days written notice prior to the removal unless there is imminent danger to the public health, safety, or welfare. Licensee shall reimburse City for the City's actual costs of removal under this Section within sixty (60) calendar days of receiving the City's invoice. In the event the City requires relocation under this Section, the Licensee shall obtain any necessary third-party approvals at its sole cost and expense. The obligations herein shall survive the termination, expiration, or revocation of the License.

21. REMOVAL OR ABANDONMENT AT EXPIRATION.

Upon the expiration, cancellation, or termination of this License, Licensee at its own expense shall remove its Network facilities, cables, and appurtenances located in the public rights-of-way and easements within the City to City's satisfaction, except nothing herein, shall require Licensee to remove any facilities, cables or appurtenances that are a part of another person's system and otherwise lawfully permitted to remain in place under any current license to use the public rights-of-way. In lieu of removal which the city is entitled to require hereunder, City at its option may permit the improvements to be abandoned in place pursuant to the directions and specifications of the City Engineer. Unless rejected by City, any such facilities which the City is entitled to require to be removed hereunder and which are not removed within one hundred twenty (120) days, automatically shall become the property of the City.

22. WAIVER.

Neither party shall be excused from complying with any of the terms and conditions of this License by any failure of the other party upon any one or more occasions to insist or to seek compliance with any such terms or conditions.

23. LEGAL ACTION; ARBITRATION.

19.1 This agreement is governed by Arizona law. In the event any legal proceeding is brought to construe any term or provision of this License, to enforce the terms of this License, to collect any money due, or to obtain any money damages or equitable relief for breach, the venue shall be Coconino County Superior Court or the District Court for the District of Arizona, and the prevailing party shall be entitled to recover, in addition to any other available remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation, and other related expenses.

19.2 If any dispute arises between the parties regarding the amount of construction permit fees and/or the Annual Fee owed to the City by the Licensee for its use of the public rights-of-ways within the License Area, the City shall establish a non-binding outside arbitration procedure to attempt to resolve disputes over the amount of such fees due before the dispute is submitted to a court for resolution. The arbitrator selected will be mutually agreeable to both parties, and each party will bear its own expenses.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WILLIAMS,
ARIZONA, this ____ day of _____, 2022.

John Moore

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM ONLY:

Mangum, Wall, Stoops & Warden, PLLC
City Attorneys

ACCEPTANCE:

LICENSEE

By: _____

By: _____

Its: _____

By: _____

SUBSCRIBED AND SWORN TO BEFORE ME this ____ day of _____,
2022, by _____.

Notary Public

My Commission Expires:

RESOLUTION #1418

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF WILLIAMS, COCONINO COUNTY, ARIZONA, CORRECTING A SCRIVENER'S ERROR IN THE PRIOR APPROVED RESOLUTION NO. 1417

WHEREAS, the City Council of the City of Williams, Coconino County, Arizona, did approve Resolution No. 1417 regarding certain business license and liquor license fees, and

WHEREAS, a scrivener's error occurred in Resolution No. 1417 where references were made to the prior version of the City Code; and

WHEREAS, City Council desires to correct the scrivener's error and confirm that there is no substantive change to any of the amounts or processes described in Resolution No. 1417, and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Williams, Coconino County, Arizona as follows:

SECTION 1. The reference in the title/preamble of Resolution No. 1417 to Article 3-1 is hereby corrected to Chapter 11.

SECTION 2. The reference in the first recital of Resolution No. 1417 to Article 3-1.09 is hereby corrected to the current reference of Chapter 111.09. The references in the next five (5) recitals of Resolution No. 1417 to Article 3-1.02 are hereby corrected to the current reference of Chapter 111.02.

SECTION 3. This resolution shall be in full force and effect immediately upon its adoption and will leave Resolution No. 1417 in effect as of its original date of adoption, which was February 24, 2022.

PASSED AND ADOPTED by the Mayor and Council of the City of Williams, Arizona, this 28 day of April 2022, with ____ ayes and ____ nays.

John W. Moore
Mayor

ATTEST:

Pamela Galvan

City Clerk

APPROVED AS TO FORM:

City Attorney
Mangum Wall Stoops & Warden PLLC



Arizona Department of Liquor Licenses and Control
800 W Washington 5th Floor
Phoenix, AZ 85007-2934
www.azliquor.gov
(602) 542-5141

Local Governing Body Recommendation
A.R.S. § 4-201(C)

1. City or Town of: Williams Liquor License Application #: 190833
(Circle one) (Arizona application #)
2. County of: Coconino City/Town/County #: _____
3. If licensed establishment will operate within an "entertainment district" as described in A.R.S. § 4-207(D)(2),

(Name of entertainment district) (Date of resolution to create the entertainment district)
- A boundary map of entertainment district must be attached.
4. The Council at a Regular meeting held on the _____ of _____
(Governing body) (Regular or special) (Day)
- _____ 2022 considered the application of Patrick Joseph Follett
(Month) (Year) (Name of applicant)
- for a license to sell spirituous liquor at the premises described in application 190833
(Arizona liquor license application #)
- for the license series #: type #12 Restaurant as provided by A.R.S. § 4-201.
(i.e.: series #10: beer & wine store)

ORDER OF APPROVAL/DISAPPROVAL

IT IS THEREFORE ORDERED that the license APPLICATION OF Patrick Joseph Follett
(Name of applicant)

to sell spirituous liquor of the class and in the manner designated in the application, is hereby recommended
for _____
(Approval, disapproval, or no recommendation)

TRANSMISSION OF ORDER TO STATE

IT IS FURTHER ORDERED that a certified copy of this order be immediately transmitted to the State Department
of Liquor, License Division, 800 W Washington, 5th Floor, Phoenix, Arizona.

Dated at _____ on _____
(Location) (Day) (Month) (Year)

(Printed name of city, town or county clerk)

(Signature of city, town or county clerk)

Staff Report



To: Mayor and Council

From: Tim Pettit, City Manager
Barbara Bell, Finance Director

Date: April 22, 2022

Re: Electric Rates

Issue: To clarify the updated Electric Rates

Background: The City Council voted on April 14, 2022 to increase the City's Electric Rates after researching the rates over several years. There are many components to the city's rates and Staff would like to get clarification for moving forward.

Staff is seeking clarification on the following:

1. Residential Classic (E-10) and APS Discount Program (E-3) will merge with the Residential Standard (E-12) making one Residential Rate.
2. Establish an ALL MONTHS rate by merging the Summer & Winter rates into one rate.
3. The Power Cost Adjuster will be reviewed on an annual basis. The PCA will be implemented (if applicable) the start of the following calendar year after review.
4. Customers with Payment arrangements made by APS will be honored by the City if the customer is in good standing at time of transition.
5. Budget billing will be made available if the City's billing software is capable. Staff will be following up with Caselle on this process. This will be for residential customers only.
6. Due to internal delays at APS, electric billing will now start JULY 2022.

A resolution will be prepared based on the last City Council vote and this vote so we capture all changes to the rates.

Information in Package: Current Rate Sheet, explanation of E-3, E-10 and E-12 rates.

Recommendation: Staff is recommending that City Council approves the changes as stated above (1 – 6).

RESIDENTIAL

Standard Rate (E-12)		Classic Rate (E-10)			
	Summer	Winter			
Monthly Charge	7.96	7.96	Monthly Charge	7.96	7.96
First 400 kWh	0.092723	0.092935	First 400 kWh	0.084236	0.095587
Next 400 kWh	0.128263	0.092935	Next 400 kWh	0.114896	0.095587
All Additional kWh	0.149163	0.092935	All Additional kWh	0.117972	0.095587

COMMERCIAL

Extra-Small General Service (E-31)			General Service (E-32)			General Service Extra Large (E-34)		
	Summer	Winter		Summer	Winter		All Months	
Monthly Charge	13.26	13.26	Monthly Charge	15.91	15.91	Monthly Charge	2577.99	
First 2500 kWh	0.125292	0.113092	Demand, Each kW > 5	2.058146	1.867184	Demand	12.45497	
Next 42000 kWh	0.125292	0.113092	First 2500 kWh + (100 kWh*(kW-5))	0.125292	0.113092	Energy	0.039253	
All Additional kWh	0.125292	0.113092	Next 42000 kWh	0.086569	0.077976			
			All Additional kWh	0.055379	0.049756			

PUMPING

Pumping (E-221)	
	All Months
Monthly Charge	15.91
Demand	1.973274
First 240 kWh per kW	0.116805
Next 275 kWh per kW	0.080204
All Additional kWh	0.066306

**RATE SCHEDULE E-3
RESIDENTIAL SERVICE
ENERGY SUPPORT PROGRAM**

AVAILABILITY

In all territory served by the City at all points where facilities of adequate capacity and the required phase and suitable voltages are adjacent to the premises served.

APPLICATION

To electric service billed under Residential Rate Schedules where the Customer has qualified for this rate. All provisions of the Residential Rate Schedule will apply except as modified herein.

MONTHLY BILL

The monthly bill shall be in accordance with above specified schedules except:

<u>For Bills with Usage of:</u>		The Total Bill as calculated according to the applicable Residential Rate Schedule (before Taxes) <u>Will be Discounted by:</u>	
0 – 400	kWh	30%	
401 – 800	kWh	20%	
801 – 1200	kWh	10%	
1201 and above	kWh	\$10	

**RATE SCHEDULE E-10
RESIDENTIAL SERVICE
CLASSIC RATE**

AVAILABILITY

Available to only those City Customers being served on the Arizona Public Service Company's Rate Schedule E-10 prior to December 6, 1991. Residential connects at a previously served dwelling (house, apartment, mobile home, etc.) will be placed on the E-12 rate.

APPLICATION

To all electric service, except as stated below, require for residential purposes in individual purposes in individual private dwellings and in individually metered apartments when such services is supplied at one premise through one point of delivery and measured through one meter. For those dwellings and apartments where electric services has historically been metered through two meters, when one of the meters was installed pursuant to an Arizona Public Service Company water heating or space heating rate schedule no longer in effect, the electric services measured by such meters shall be combined for billing purposes.

Not applicable to breakdown, standby, supplementary or resale services.

TYPE OF SERVICE

Single Phase, 60 hertz, at one standard voltage (120/240 or 120/208 as may be selected by Customer subject to availability at the Customer's premise). Three phase service is furnished under City's standard rules covering line extensions. Transformation equipment is included in cost of extension. Three phase service is required for motors of an individual rated capacity of more the 1½HP.

MONTHLY BILL

The monthly bill shall be the greater of the amount computed under A. or B., below, including the applicable adjustments.

A. Rate

May - October Billing Cycles:

\$ 7.50	Basic Service Charge, plus
0.0794	per Kwh for the first 400 Kwh
0.1083	per Kwh for the next 400 Kwh
0.1112	per Kwh all additional Kwh

November - April Billing Cycles:

\$ 7.50	Basic Service Charge, plus
0.0901	per Kwh for all Kwh

B. Minimum

\$ 7.50	per month
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NOTE: Pursuant to a City Council Decision on or about September 1, 2011 and later clarified, all charges for this rate will increase by three (3) percent effective with the January, 2012 bills. In addition, the Decision also ordered a second three (3) percent increase effective with January, 2013 bills.

**RATE SCHEDULE E-10
RESIDENTIAL SERVICE
CLASSIC RATE**

ADJUSTMENTS

Plus the applicable proportionate part of any taxes, or governmental impositions which are or may in the future be assessed on the basis of gross electric service revenues of the City and/or the price or revenue from the electric energy or service sold and/or the volume of energy generated or purchased for sale and/or sold hereunder.

CONTRACT PERIOD

As provided in City's standard agreement for sales.

TERMS AND CONDITIONS

Subject to City's Terms and Conditions for the sale of electric services.

FROZEN

**RATE SCHEDULE E-12
RESIDENTIAL SERVICE
STANDARD RATE**

AVAILABILITY

In all territory served by the City at all points where facilities of adequate capacity and the required phase and suitable voltage are adjacent to the premise served.

APPLICATION

To all electric service, except as stated below, required for residential purposes in individual private dwellings and in individually metered apartments when such services is supplied at one premise through one point of delivery and measured through one meter. For those dwellings and apartments where electric service has historically been metered through two meters, when one of the meters was installed pursuant to an Arizona Public Service Company water heating or space heating rate schedule no longer in effect, the electric service measured b such meters shall be combined for billing purposes.

Not applicable to breakdown, standby, supplementary or resale service.

TYPE OF SERVICE

Single phase, 60 hertz, at one standard voltage (120/240 or 120/208 as may be selected by Customer subject to availability at the Customer's premise). Three phase service is furnished under City's standard rules covering line extensions. Transformation equipment is included in cost of extension. Three phase service is required for motors of an individual rated capacity of more than 7½ HP.

MONTHLY BILL

The monthly bill shall be the greater of the amount computed under A. or B., below, including the applicable adjustments.

A. **RATE**

May – October Billing Cycles:

\$ 7.50	Basic Service Charge, plus
0.0874	per Kwh for the first 400 Kwh
0.1209	per Kwh for the next 400 Kwh
0.1406	per Kwh all addition Kwh

November – April Billing Cycles:

\$ 7.50	Basic Service Charge, plus
0.0876	per Kwh for all Kwh

B. <u>MINIMUM</u>	\$ 7.50	per month
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NOTE: Pursuant to a City Council Decision on or about September 1, 2011 and later clarified, all charges for this rate will increase by three (3) percent effective with the January, 2012 bills. In addition, the Decision also ordered a second three (3) percent increase effective with January, 2013 bills.

**RATE SCHEDULE E-12
RESIDENTIAL SERVICE
STANDARD RATE**

ADJUSTMENTS

Plus the applicable proportionate part of any taxes, or governmental impositions which are or may in the future be assessed on the basis of gross electric services revenues of the City and/or the price or revenue from the electric energy or services sold and/or the volume of energy generated or purchased for sale and/or sold hereunder.

CONTRACT PERIOD

As provided in City's standard agreement for service.

TERMS AND CONDITIONS

Subject to City's Terms and Conditions for the Sale of Electric Service.

City of Williams

SPPA Box Canyon (Solar & Battery) and Mesquite (Thermal) Agreements

April 28th, 2022



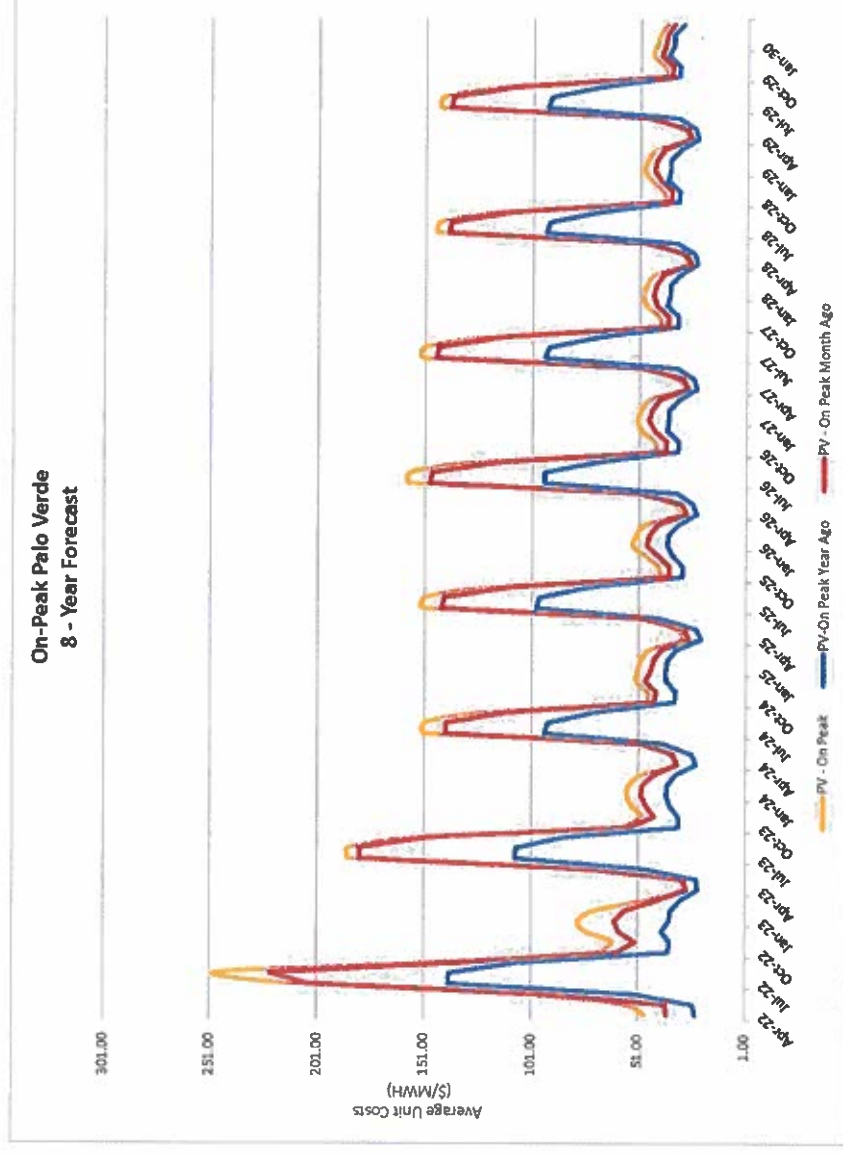
Requesting Council Approval of Four Power Supply Related Agreements

- 1) [Box Canyon Resale Agreement](#) between Southwest Public Power Agency and Participants
- 2) [SPPA Project Contract No. 2021-2 \(Power Purchase Agreement Project\)](#)
- 3) Second Amendment to the Amended and Restated Power Purchase Agreement by and between [Mesquite Power, LLC](#) and the Undersigned Buyers
- 4) Fourth Amendment to the Administration and Scheduling Agreement. Adds The Tohono O'odham Utility Authority and the Town of Wickenburg to the existing agreement.

Southwest Public Power Agency (SPPA) Members

Aguila Irrigation District	Gila River Indian Community Utility Authority
Ak-Chin Energy Services	Harquahala Valley Power District
Buckeye Water Conservation & Drainage District	Maricopa County Municipal Water Conservation District No. 1
City of Safford	McMullen Valley Water Conservation & Drainage District
City of Williams	Navajo Tribal Utility Authority
Electrical District No. 2 of Pinal County	Ocotillo Water Conservation District
Electrical District No. 3 of Pinal County	Roosevelt Irrigation District
Electrical District No. 4 of Pinal County	San Carlos Irrigation Project
Electrical District No. 6 of Pinal County	Tohono O'odham Utility Authority
Electrical District No. 7 of Maricopa County	Tonopah Irrigation District
Electrical District No. 8 of Maricopa County	Town of Thatcher
	Town of Wickenburg

Significant increases in price and volatility of market power



SPPA Nov 2020 Request for Proposals

SPPA received a total of **71 distinct solar only** proposals and **123 distinct solar + storage** offers from 8 developers and 2 offers for thermal (natural gas) resources.

From those proposals, the SPPA Board selected

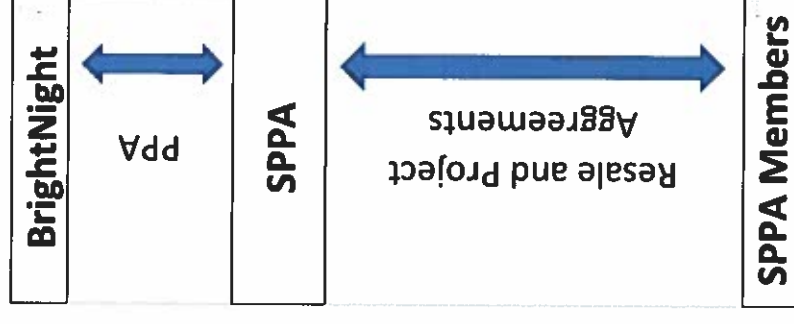
- Additional Mesquite Gas Fired Generating Capability (100 MW beginning 2024) – **Williams increases to 5 MW from Current 2 MW**
- BrightNight (Box Canyon) Solar + Battery Generating Capability (300 MW Solar, 300 MW 2hr battery, 2025) – **Williams will contract for 5.9 MW or 1.97%**
- Clenera Solar + Battery Generating Capability (25 MW Solar, 10 MW, 2024) – **Williams will contract for 0.5 MW**

Mesquite Gas Fired Generating Capability (100 MW in 2024)

- Amendment to existing agreement for 483 MW, increasing to 583MW
- All terms and conditions of the original 30 year agreement continue with minor changes (lower capacity charges).
- Williams' take will increase to 5 MW from its current 2 MW.

BrightNight (Box Canyon) Solar (300MW) + Battery (300 MW) PPA, Resale & Project Agreements – 2025/2026

04/11/2022 - SPPA Board of Directors approved execution of agreement (PPA) between SPPA and BrightNight upon execution of 75% of SPPA members signing the Resale & Project Agreements between SPPA and the individual SPPA members.



BrightNight (Box Canyon) Solar + Battery

Major Deal Points

- **Williams will contract for 5.9 MW or 1.97%**
- 20 yr fixed price
- Although COD was targeted as summer of 2024, supply chain issues have delayed that date to at least the summer of 2025.
- BrightNight will tender its final contract price for energy on November 1, 2022. Depending on the offer, SPPA and BrightNight will have a deal or will negotiate terms.
- Depending on the price that BrightNight offers at that time, the Guaranteed COD date could be May 31, 2025 or May 31, 2026.
- The price will also affect the amount of security SPPA must provide. **Williams' deposit will be approximately \$280,000.**

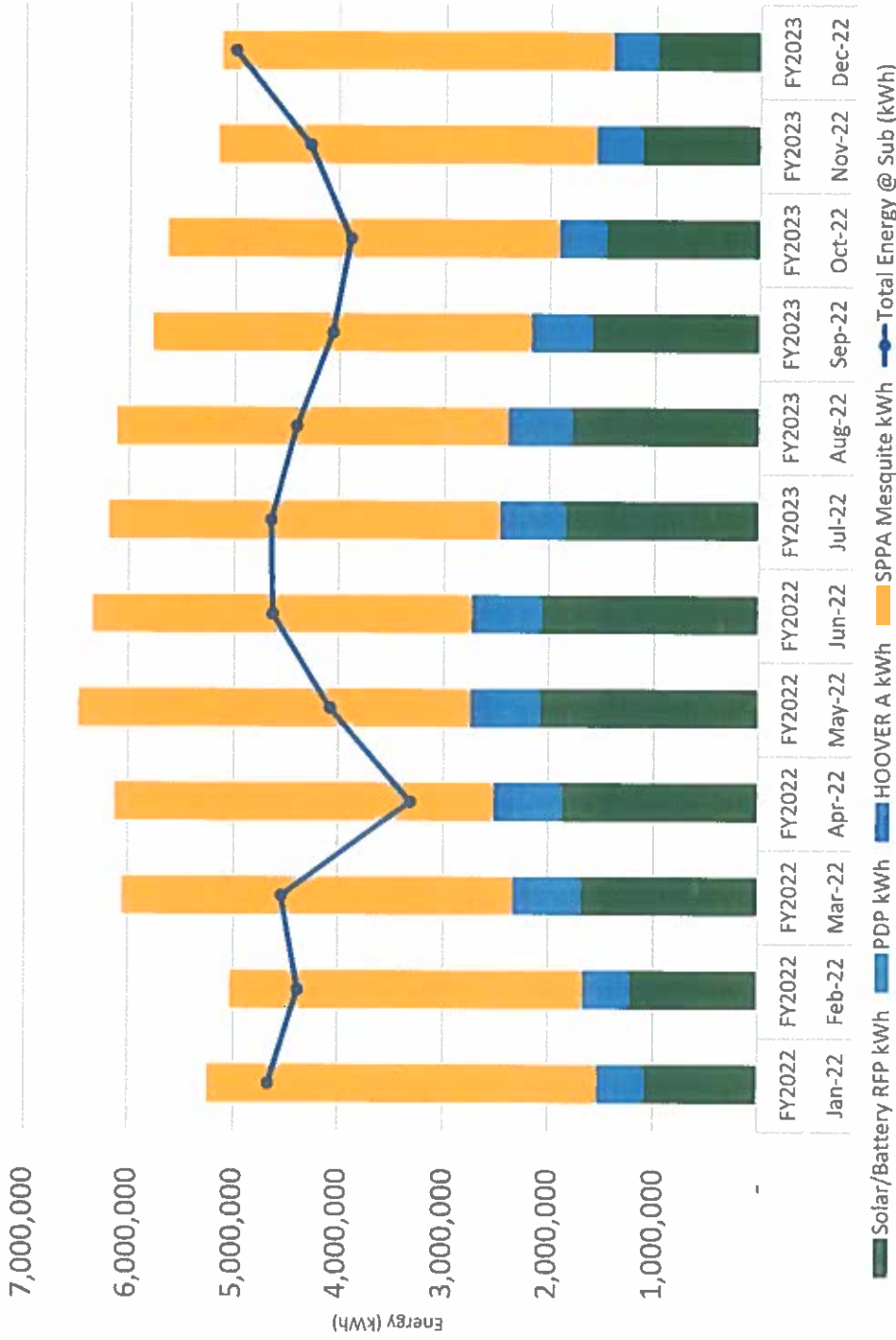
BrightNight (Box Canyon) Solar + Battery Major Deal Points (continued)

- Under the Resale Agreement, members assume the obligation to “**step up**” and assume their entitlement share of the entitlement share of a defaulting participant.
- Before invoking step-up, SPPA will first attempt to remarket a defaulting member’s entitlement share to other project participants, and to third parties eligible to become project participants.
- However, if those means have been exhausted, the other participants must step up to assume their entitlement share of the defaulting participant’s obligations.

Clenera Solar (25 MW) + Battery (25 MW) 2024

- **Williams will contract for 0.5 MW**
- **Agreement is forthcoming**

Williams Projected CY2022 Energy - with Solar/Battery



Recommendations – Approve Agreements

Box Canyon *Resale Agreement between Southwest Public Power Agency and Participants*
SPPA **Project** Contract No. 2021-2 (*Power Purchase Agreement Project*).

*Second Amendment to the Amended and Restated Power Purchase Agreement by and between **Mesquite Power, LLC** and the Undersigned Buyers*

Fourth Amendment to the Administration and Scheduling Agreement.
Adds The Tohono O’odham Utility Authority and the Town of Wickenburg to the existing agreement.

QUESTIONS?

RESOLUTION NO. 1419

**RESOLUTION OF THE CITY COUNCIL
OF CITY OF WILLIAMS
APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY
OF THE SPPA PROJECT CONTRACT NO. 2021-2
(POWER PURCHASE AGREEMENT PROJECT)**

WHEREAS, City of Williams (“Williams”) and certain Southwest Public Power Agency, Inc. (“SPPA”) members have requested SPPA to create a new project (the “Project”) for the purchase of power and power-related attributes.

WHEREAS, to create the Project, it is necessary for Williams to approve, execute and implement the SPPA Project Contract No. 2021-2 (Power Purchase Agreement Project) (the “Project Contract”), a copy of which is attached hereto as **Exhibit A**.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Williams that:

1. The Project agreement between Williams, SPPA and the entities listed in the Project Contract, as presented to the City Council of Williams, a copy of which is attached hereto as **Exhibit A**, is hereby approved.

2. The Mayor and any other officer of Williams are authorized to execute the Project Contract with only such changes as approved by the signatory, in consultation with Williams’s legal counsel. From and after the execution and delivery of the Project Contract, the officers of Williams are hereby authorized and directed to perform all acts, execute and deliver all documents and to take such other steps necessary or convenient to implement and perform the provisions of the Project Contract.

Adopted this ____ day of _____, 2022.

Mayor John W. Moore
Attest:

City Clerk Pamela Galvan

EXHIBIT A

[Power Purchase Agreement Project]

SPPA PROJECT CONTRACT NO. 2021-2
(Power Purchase Agreement Project)

This SPPA Project Contract No. 2021-2 (the “Project Contract”) is to be effective as of the 14th day of March, 2022 (the “Effective Date”), and is entered into by and among Southwest Public Power Agency, Inc., an Arizona nonprofit corporation and a political subdivision of the State of Arizona (“SPPA”), and those entities who have executed this Project Contract or the form of Participation Agreement attached hereto as **Exhibit C** and one or more Resale Agreements (defined below) (each a “Project Participant” and, collectively, the “Project Participants”).

RECITALS

A. SPPA is a political subdivision of the State of Arizona created pursuant to an Intergovernmental Agreement, dated July 31, 2014 (the “IGA”), entered into by a number of public entities (the “SPPA Members”), including some of the Project Participants, under the authority granted under A.R.S. § 11-952.

B. Section 4 of the IGA grants numerous powers to SPPA, including the power to enter into contracts with one or more of the SPPA Members, including a contract for a project.

C. Under Section 2(n) of the IGA, a Project Contract is a contract between SPPA and two or more of the SPPA Members that are a party to the IGA, providing to each such SPPA Member an entitlement or a right to participate in the capacity, output, service and costs of a project of SPPA, and obligating each such SPPA Member to make payments with respect to the costs thereof in accordance with the terms of the Project Contract.

D. The project which is the subject of this Project Contract is referred to herein as the “Project”.

E. The undersigned SPPA Members wish to participate in this Project and to become Project Participants with an initial listing in **Exhibit A**, which table SPPA may update from time to time as may be necessary to reflect changes to the Project Participants.

F. Under Section 5(b) of the IGA, SPPA may offer Project participation to entities that are not signatories to the IGA.

G. SPPA intends to enter into one or more Power Purchase Agreements (“PPA”) for the purchase of power and power-related attributes (the “Product”). A copy of each PPA, in final form, will be attached in an Appendix hereto. In addition, for each PPA, SPPA will enter into a Resale Agreement with SPPA Members who wish to purchase some or all of the Product available under that PPA.

H. On November 2, 2020, SPPA issued a Request for Proposals (“RFP”) for the purchase of a variety of power products, including solar, solar plus storage and natural gas generated electricity.

I. Initially, SPPA intends to contract for the following Products:

a. A PPA with BOCA BN, LLC (as "Seller") for the purchase of solar plus storage power and power-related attributes from the Box Canyon Project (the "Box Canyon PPA").

b. A PPA with Lone Butte Solar LLC (as "Seller") for the purchase of solar plus storage power and power-related attributes from the Lone Butte Project (the "Lone Butte PPA").

J. The initial Project Participants, by execution of this Project Contract or the form of Participation Agreement attached hereto as Exhibit C and a Box Canyon Resale Agreement in substantially the form attached hereto as Exhibit B, will purchase all or a portion of the Box Canyon Product.

K. From time to time, SPPA is likely to issue other RFPs for the purchase of power and/or power-related attributes and otherwise purchase power on behalf of Project Participants. Upon approval by the Project Management Committee, such future purchases also may be included as part of this Project. Any resulting, approved PPA will be included as an Appendix hereto.

L. Scheduling of the Product which is the subject of this Project Contract will be done pursuant to the individual PPAs, the Resale Agreements, the SPPA Project Agreement of the SPPA Pool, dated September 1, 2014 (the "Pool Agreement") and the WREGIS Operating Rules.

M. Each Project Participant will pay for its respective share of the Project Power Costs and the Project Administrative Costs, in accordance with the terms of this Project Contract and the Resale Agreements.

N. Pursuant to Section 5(b) of the IGA, when a Project Contract is entered into between two or more SPPA Members, the limitations on the exercise of common powers of the Members contained in the IGA are only applicable to the common powers of the SPPA Members entering into the Project Contract. The Project Participants have the common powers to purchase the Product.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Project Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

ARTICLE 1 **DEFINITIONS**

1.1 "Box Canyon PPA" means the Power Purchase Agreement between SPPA and BOCA BN, LLC for the Box Canyon Project, as amended from time to time.

- 1.2 “Business Day” means a day that is not a Saturday, a Sunday or a day on which banking institutions are not required to be open, or are authorized or required to close, in the State of Arizona.
- 1.3 “Lone Butte PPA” means the Power Purchase Agreement between SPPA and Lone Butte Solar, LLC, managed by Clenera LLC, for the Lone Butte Project, as amended from time to time.
- 1.4 “Effective Date” has the meaning given in the preamble to this Project Contract.
- 1.5 “Event of Default” has the meaning given in Article 11.
- 1.6 “Force Majeure” means any act or event that delays or prevents a Party (“Affected Party”) from timely performing all or a portion of its obligations under this Project Contract or from complying with all or a portion of the conditions under this Project Contract if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. This definition of Force Majeure applies to this Project Agreement and does not apply to the PPAs or Resale Agreements, which are governed by their respective Force Majeure or equivalent provisions.

Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; outbreak; epidemic or pandemic, including COVID-19 (or the related virus designated SARS-CoV-2) and all actions taken by a governmental authority in respect thereof, notwithstanding the existence or foreseeability of the occurrence thereof or delays attributable thereto as of the Effective Date; landslide; mudslide; sabotage; terrorism; earthquake; windstorm; hailstorm; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party.

- 1.7 “Good Utility Practice” means any of the practices methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.

- 1.8 "Participation Agreement" means the agreement executed between SPPA and an entity that is not an initial Project Participant, making that entity a Project Participant. A form of Participation Agreement is attached at Exhibit C.
- 1.9 "Party" or "Parties" means SPPA or any Project Participant(s).
- 1.10 "Penalty Interest Rate" means, for any day of a calendar month, 1/365 of the sum of the per annum prime lending rate published in *The Wall Street Journal* under "Money Rates" on the first Business Day of such month, plus two (2) percentage points (two hundred (200) basis points), provided that the Penalty Interest Rate shall not exceed the maximum rate permitted by applicable law.
- 1.11 "Power Purchase Agreement" or "PPA" is a contract between an energy seller and a buyer.
- 1.12 "Product" means the Product described in each PPA and related Resale Agreements.
- 1.13 "Project Administrative Costs" means any necessary expenditures related to obtaining or managing a PPA and related Resale Agreement, including, but not limited to, the cost of SPPA personnel or contractors performing work attributable to the Project and legal costs attributable to the Project.
- 1.14 "Project Contract" means this Project Contract, as fully executed by SPPA and the Project Participants.
- 1.15 "Project Costs" means the amounts billed to SPPA for the purchase of the Product and the net costs of any associated transmission and distribution service, ancillary services, Seller performance damage payments, Seller storage availability true-up payments, environmental compliance costs or payments and any necessary associated facilities. It also includes study, working capital, guaranty and security deposit costs.
- 1.16 "Project Management Committee" means the Committee composed of one designated representative (or an alternate) of each Project Participant, as described in Article 9.
- 1.17 "Project Participant" means an entity that has executed (i) this Project Contract as an original signatory, or (ii) a Participation Agreement in the form of Exhibit C making it a Party hereto, and whose participation herein has not been terminated.
- 1.18 "Project Participant Effective Date" means, (i) for each of the original Project Participants, the Project Effective Date, and (ii) for each Project Participant that was not an original signatory, the date as of which it became a Party hereto by executing a Participation Agreement and one or more Resale Agreements.
- 1.19 "Resale Agreements" means the resale agreements between SPPA and the Project Participants for each individual PPA.
- 1.20 "Seller(s)" means a seller of a Product pursuant to a PPA.
- 1.21 "SPPA" means the Southwest Public Power Agency, Inc.

- 1.22 “SPPA Member” means a signatory to the IGA whose participation therein has not been terminated.
- 1.23 “WREGIS” means the renewable energy certificate tracking system Western Renewable Generation Information System (WREGIS).
- 1.24 “WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

ARTICLE 2

PROJECT

- 2.1 This Project Contract will facilitate SPPA entering into one or more PPAs and managing such PPAs now and in the future.

ARTICLE 3

PPAS AND RESALE AGREEMENTS

- 3.1 Each PPA approved by the Project Management Committee, now and in the future, together with the Resale Agreements related thereto, shall become an Addendum to this Project Contract.
- 3.2 Each Project Participant executing a Resale Agreement commits to purchasing or paying for the portion of the Product set forth for that Project Participant in the Resale Agreement.
- 3.3 The rates paid under the Resale Agreements may be blended rates, utilizing the rates under each approved PPA.

ARTICLE 4

FUNDING

- 4.1 Each Project Participant shall pay SPPA its share of the Project Costs and the Project Administrative Costs, as provided in the respective Resale Agreements.

ARTICLE 5

MEETINGS

- 5.1 The Project Management Committee may hold meetings, but Project Participants currently contemplate receiving progress reports and discussing the Project at the Pool Agreement Management Committee meeting and/or the SPPA board of directors’ meetings.

ARTICLE 6

TERM AND TERMINATION

- 6.1 The term of this Project Contract will begin on the Effective Date and continue through the term of all of the PPAs. Thereafter, the Project Contract will be automatically renewed every five years unless and until Project Participants vote to terminate, suspend or replace it. In the event of termination, the provisions of this Project Contract shall survive with

respect to such matters as billing, payment, confidentiality and indemnification as they relate to the period prior to termination.

- 6.2 At such time as a Project Participant is no longer a party to any Resale Agreement under this Project Contract, the Project Participant may withdraw from the Project Contract by providing six months' advance notice to SPPA. Such termination will not affect the rights of the other Project Participants continuing under the Project Contract.

ARTICLE 7
ADDITION, WITHDRAWAL AND REMOVAL OF POOL
PARTICIPANTS AND CHANGES IN CATEGORY PARTICIPATION

- 7.1 Upon approval of the Project Management Committee pursuant to Article 9, new Project Participants may be added as Parties to this Project Contract.
- 7.1.1 Each new Project Participant shall execute (i) the form of Participation Agreement attached hereto as **Exhibit C**; and (ii) one or more new Resale Agreements or Participation Agreements for existing Resale Agreements, as updated to reflect the new Project Participant.
- 7.1.2 Acceptance of a new Project Participant may be subject to a requirement that it make a payment determined by the Project Management Committee. Such payments shall be set forth in the new Project Participant's Participation Agreement. Such payments will be used as directed by the Project Management Committee, to reduce fees and/or accumulate equity for the benefit of the Project, or for other appropriate purposes.
- 7.2 Notwithstanding Article 21.3 hereof, changes to **Exhibit A** to reflect the entry of a new Project Participant or termination of this Project Contract with respect to a Project Participant shall be made as a matter of course by SPPA and shall not require formal amendment of this Project Contract.

ARTICLE 8
STANDARD OF CONDUCT

- 8.1 In discharging its duties and responsibilities hereunder, SPPA shall at all times perform these functions in accordance with the terms of this Project Contract and other applicable agreements, all lawful directions of the Project Management Committee, applicable laws and government approvals and Good Utility Practice.

ARTICLE 9
PROJECT MANAGEMENT COMMITTEE

- 9.1 Project Participants shall make decisions regarding activities hereunder, and oversee and guide SPPA's management of the Project, the PPAs and the Resale Agreements through the Project Management Committee.

- 9.2 The Project Management Committee shall consist of one authorized representative from each Project Participant. Each Project Participant may designate a representative and one or more alternates, but only one representative for each Project Participant may vote on any occasion when a vote is taken. The same individual may be appointed to serve as the representative or alternate for more than one Project Participant. However, a Project Participant shall not appoint as its representative or alternate (i) any employee of SPPA or (ii) any employee or principal of a consulting firm or law firm providing services under a contract to SPPA, unless such individual is by contract acting in a management capacity for the Project Participant.
- 9.3 Each Project Participant shall evidence the appointment of its representative (and alternate(s), if applicable) by written notice to SPPA, which SPPA shall promptly distribute to the other Project Participants, and by similar notice, any Project Participant may change its representative (or alternate(s)) on the Project Management Committee at any time. On an annual basis, at SPPA's request, each Project Participant shall provide written confirmation to SPPA of the names of its representative and any alternates. The Project Management Committee will also develop and provide to SPPA a list of all necessary and appropriate contacts of Project Participant personnel. Each Project Participant shall promptly inform SPPA in writing whenever there is a change in its personnel to be included on the list.
- 9.4 (a) If a matter comes before the Project Management Committee that is related to a specific PPA, only the Project Participants that are parties to the Resale Agreement for that PPA are entitled to vote. Each such Project Participant shall be entitled to one vote on such matters. Approval of such matters shall be obtained by the assenting vote of a majority of such Project Participants.
- (b) If any such Project Participant requests entitlement voting, the Project Management Committee shall employ entitlement voting ("Entitlement Voting"), with each such Project Participant having the number of votes equal to that Participant's entitlement under that PPA. In such case, approval shall be obtained by the assenting vote of the majority of the PPA entitlement votes cast by such Project Participants.
- (c) Notwithstanding the provisions of Section 9.4 (a) and (b), above, with respect to decisions by SPPA under Part III of Exhibit H to the Box Canyon PPA, each Project Participant that is a party to the Resale Agreement for the Box Canyon PPA shall be entitled to one vote on such matters. Approval of such matters shall be obtained by the assenting vote of a majority of such Project Participants. If any such Project Participant requests supermajority Entitlement Voting ("Supermajority Entitlement Voting") the Project Management Committee shall employ Supermajority Entitlement Voting, with each such Project Participant having the number of votes equal to that Participant's entitlement under the Resale Agreement for the Box Canyon PPA. In such case, approval shall be obtained by the assenting vote of 75% of the Entitlement Voting votes cast by such Project Participants.
- (d) On all other matters, each Project Participant shall be entitled to one vote on matters that come before the Project Management Committee. Project Management Committee

approval shall be obtained by the assenting vote of the majority of the Project Management Committee.

- 9.5 As an example of how the number of votes are determined for Entitlement Voting, the Box Canyon PPA entitlements are set forth in Schedule 4.1 of the Box Canyon PPA Resale Agreement. The column entitled "Participant Entitlement" in said Schedule 4.1 sets forth the number of votes to which each Project Participant would be entitled to vote on a Project Management Committee decision related to the Box Canyon PPA.
- 9.6 At its first meeting, the Project Management Committee shall, by majority vote, select a chairperson from among the Project Participant representatives serving on the Project Management Committee. Chairperson elections shall occur every two years thereafter. If no election occurs, the then current Chairperson shall remain in that position until a successor is elected. The Project Management Committee may elect additional officers as it deems appropriate.
- 9.7 The Project Management Committee shall attempt to meet on a regular schedule as determined by the Project Management Committee, or at least, annually. It is anticipated that regular meetings will be held in conjunction with meetings of the SPPA Pool Management Committee. SPPA shall arrange for the location and other logistical support (e.g., teleconference access, refreshments) for meetings of the Project Management Committee, issue meeting notices, keep records of the meetings, and provide all other reasonable and necessary facilitation of such meetings.
- 9.8 Special meetings of the Project Management Committee may be convened by the chairperson between scheduled meetings, and shall be convened by the chairperson if he or she receives a request from two (2) or more Project Management Committee members or SPPA.
- 9.9 Actions by the Project Management Committee pursuant to this Project Contract, including the giving of instructions and/or authority to SPPA in connection with its responsibilities hereunder, shall be taken at meetings of the Project Management Committee duly called and with adequate notice to all Project Participants. SPPA shall provide written notice of any meeting of the Project Management Committee (a) to each Project Participant in the same manner, with as much advance notice as is practicable (normally one week in advance), and (b) in compliance with applicable open-meeting laws.
- 9.10 Participation by authorized representatives at Project Management Committee meetings may be in person, electronically, via virtual meeting or telephone. A quorum shall consist of those authorized representatives present in person or otherwise representing a numerical majority of the Project Participants.
- 9.11 The following matters shall be decided by the Project Management Committee:
- a) The addition of any new Project Participant to this Project Contract.

- b) Actions in response to an Event of Default by a Project Participant pursuant to Article 11. The defaulting Project Participant may not participate in any such votes.
- c) The termination of this Project Contract in its entirety (Project Participants may not terminate this Project Contract unless the PPAs have been terminated).
- d) The recommendation to the SPPA board related to Section 9.4 (c), above.

ARTICLE 10

BILLING AND PAYMENT

- 10.1 Billing and Payment shall be governed by the Resale Agreements and the Pool Agreement.

ARTICLE 11

DEFAULT

- 11.1 The following shall constitute an event of default on the part of the applicable Party ("Event of Default"):
- 11.1.1 A Party defaults under a Resale Agreement.
- 11.2 A defaulting Project Participant shall not have the right to vote on matters coming before the Project Management Committee during the period in which the default remains uncured, although its representative (or alternate(s)) may still attend all meetings of the Project Management Committee; provided, however, the Project Management Committee may exclude the defaulting Project Participant from discussions regarding the defaulting Project Participant.
- 11.3 Upon the occurrence and during the continuance of an Event of Default by a Project Participant, the Project Management Committee may, voting without the defaulting Project Participant, do any or all of the following: (i) take such actions as are permitted or required under the relevant Resale Agreement; (ii) terminate this Project Contract with respect to such Project Participant; and/or (iii) pursue any and all other remedies against the defaulting Project Participant available at law or in equity, subject to the dispute resolution procedures set forth in the relevant Resale Agreement and the other limitations set forth in this Project Contract.
- 11.4 Upon the occurrence and during the continuance of an Event of Default by SPPA, one or more affected Project Participants may pursue the dispute resolution procedures set forth in the relevant Resale Agreement, subject to all applicable limitations set forth in this Project Contract. In no event, however, shall any Project Participant be entitled, by virtue of an Event of Default by SPPA, to (i) terminate the Project Participant's participation in this Project Contract other than in accordance with Article 6, or (ii) terminate this Project Contract in its entirety.

- 11.5 Each Project Participant acknowledges that (i) effective operation of the Project for the benefit of the Project Participants will require exercise of business judgment by SPPA officers, directors, personnel and consultants on the basis of information available to them, and (ii) while SPPA's aim will be to enhance value and reduce risk to the Project Participants, it is not reasonable to expect that value will be ideally maximized or that risk will be fully eliminated. In no event shall a claim of breach or Event of Default by SPPA be based on the dissatisfaction of one or more Project Participants with the PPAs, absent a showing of gross negligence or willful misconduct by SPPA. The sole remedy available to a Project Participant that is dissatisfied with SPPA's ability to achieve the Project's goals is to withdraw from participation in this Project Contract in accordance with Article 6.

ARTICLE 12

INDEMNIFICATION

- 12.1 The Project Participants shall, severally and not jointly, indemnify and hold SPPA and SPPA's members, directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all liability (including third-party claims, losses, damages, attorneys' fees, and litigation costs) that SPPA may sustain or suffer as a result of SPPA's performance of its obligations under this Project Contract. Such indemnity shall not apply (i) to the extent such liability is covered by insurance, and/or (ii) if and to the extent that such liability was caused directly or indirectly by the fraud, gross negligence, willful misconduct, or breach of obligation under this Project Contract of SPPA; provided, however, that, notwithstanding such exclusion, such indemnity shall apply if and to the extent that the conduct of SPPA that would otherwise give rise to such exclusion was undertaken specifically at the express direction of the Project Management Committee and was reasonably necessary in order to carry out such direction.
- 12.2 If a customer of a Project Participant makes a claim or brings an action against one or more of the other Project Participants for any death, injury, loss, or damage arising out of or in connection with this Project Contract, the Project Participant whose customer is making the claim shall indemnify and hold harmless SPPA and the other Project Participants and their directors, officers, and employees for, from and against any liability for such death, injury, loss, or damage, unless such claim or action arises from the gross negligence or willful misconduct of SPPA or the other Project Participant(s).

ARTICLE 13

PROJECT PARTICIPANT OBLIGATIONS

- 13.1 Each Project Participant will cooperate with SPPA and the other Project Participants in fulfilling the objectives of this Project Contract. Without limiting the foregoing, each of the Project Participants agrees that it will cooperate with SPPA, promptly, as and when reasonably requested by SPPA in order for it to perform its duties, responsibilities and obligations under this Project Contract, including taking all reasonable actions necessary to comply with applicable laws and to obtain any necessary or desirable government approvals, and executing and delivering documents, certificates or instruments necessary or appropriate to SPPA's duties, responsibilities and obligations under this Project Contract.

ARTICLE 14
TRANSFERS AND ASSIGNMENTS

- 14.1 SPPA shall not assign this Project Contract.
- 14.2 No Project Participant shall have the power or the right, without the prior approval of a simple majority of the Project Management Committee, voting without the transferring Project Participant, which approval shall not be unreasonably delayed or withheld, to permanently transfer or assign all or any part of its rights and duties under this Project Contract.
- 14.3 Should any Project Participant desire to permanently transfer or assign its rights and obligations under this Project Contract (the "Transfer Interest") to any other entity or agency (including without limitation one or more other Project Participants), the following conditions shall apply:
- 14.3.1 At the time of the transfer either (a) the transferring Project Participant must not be in default of any of its material obligations under this Project Contract or (b) such default must be cured on or prior to the transfer date.
- 14.3.2 The transferring Project Participant must transfer or assign to the same transferee or assignee the Project Participant's interest and obligations under any Resale Agreement to which the Project Participant is a Party, pursuant to the terms of such Resale Agreement.
- 14.3.3 The transferee or assignee must meet any and all eligibility requirements to become a Project Participant.
- 14.3.4 The transfer shall be made subject to all of the rights, benefits and burdens of this Project Contract and shall not relieve the transferring Project Participant of any obligations or liabilities incurred prior to the transfer.
- 14.3.5 The proposed transferee shall, effective as of the receipt of such Transfer Interest, assume and agree, in writing, delivered to the other Parties, to perform the provisions of this Project Contract, and at such point shall be deemed a Project Participant under this Project Contract. Upon receipt of such written agreement by the transferee to assume all of the transferring Project Participant's rights and obligations being assigned, the other Parties shall release the transferring Project Participant from any liability accruing or arising after the date of the transfer in respect of the rights and obligations so assigned. The transferee shall designate a representative to fulfil the commitments under Article 9.
- 14.3.6 In no event shall any transfer be permitted if, in the written opinion of SPPA's bond counsel, the transfer would jeopardize the tax-exempt status of any bonds issued by SPPA.

ARTICLE 15
SCHEDULING

- 15.1 Scheduling of the Product which is the subject of this Project Contract will be done pursuant to the individual PPAs, the Resale Agreements, the Pool Agreement and the WREGIS Operating Rules.

ARTICLE 16
FORCE MAJEURE

- 16.1 The Force Majeure provisions or similar provisions in the relevant PPA and Resale Agreement will apply under this Project Contract. For the removal of doubt, no event of Force Majeure shall operate to provide relief, allow delay or otherwise excuse the obligations of a Party to make payments required by this Project Contract.

ARTICLE 17
DISPUTE RESOLUTION

- 17.1 No Party shall seek to arbitrate or litigate a controversy between or among the Parties without the Party's most senior executive first attempting in good faith to resolve the dispute with the most senior executive(s) of the other Party(ies) involved in the dispute. Such executives shall decide, within ten (10) Business Days of a written notice of the dispute, the maximum period during which they will attempt to resolve the dispute before any Parties may initiate arbitration or litigation. If such senior executives succeed in resolution of the controversy, then the resolution of the dispute will be reduced in writing and signed by the senior executives who were involved. If such executives fail for any reason to agree upon a maximum period during which they will attempt to resolve the controversy, then the maximum period shall end forty-five (45) days after the written notice of dispute.
- 17.2 EACH OF THE PARTIES WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BETWEEN OR AMONG TWO OR MORE OF THE PARTIES TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS PROJECT CONTRACT OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS PROJECT CONTRACT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.
- 17.3 The prevailing Party(ies) shall be entitled to recover from the opposing Party(ies) involved in any litigation hereunder the prevailing Party's reasonable attorneys' fees and costs (including reasonable expert witness fees) incurred in connection with such litigation.
- 17.4 Disputes under the relevant PPA or Resale Agreements will be handled according to the terms of those agreements.

ARTICLE 18
REPRESENTATIONS AND WARRANTIES

- 18.1 Each Party hereby represents and warrants as follows to each other Party (i) as of the Effective Date, for SPPA and each of the initial Project Participants, and (ii) as of the subsequent Effective Date for SPPA and each subsequent Project Participant:
- 18.2 It: (a) is duly formed, validly existing and in good standing under the applicable laws of the jurisdiction of its formation, (b) has all requisite power and all material government approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted; and (c) is duly qualified to do business in all jurisdictions in which the nature of the business conducted by it or proposed to be conducted by it makes such qualification necessary.
- 18.3 It has all necessary power and authority to execute, deliver and perform its obligations under this Project Contract, and the execution, delivery and performance by it of this Project Contract have been duly authorized by all necessary action on its part.
- 18.4 The execution, delivery and performance by it of this Project Contract does not and shall not:
- 18.4.1 Violate its constituent documents; or
- 18.4.2 Result in a breach of or constitute a default under any other material agreement to which it is a party.
- 18.5 This Project Contract: (a) has been duly authorized and duly and validly executed under Arizona law and delivered by it; and (b) assuming the due authorization, execution and delivery thereof by the other Parties hereto, constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, conditions and provisions, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general principles of equity.
- 18.6 The effectiveness of this Project Contract as to those Project Participants that are regulated by Rural Utilities Service ("RUS") (set forth on **Exhibit D**) is conditioned on approval hereof by RUS. Except for such RUS approval, all government approvals necessary under any applicable law in connection with the due execution and delivery of, and performance by it of its obligations and the exercise of its rights under, this Project Contract have been duly obtained or made and are in full force and effect, are final and not subject to appeal or renewal, are held in its name and are free from conditions or requirements compliance with which could reasonably be expected to have a material adverse effect or which it does not reasonably expect to have a material adverse effect or which it does not reasonably expect to be able to satisfy.

ARTICLE 19
ARIZONA STATUTORY PROVISIONS

- 19.1 The Parties hereby acknowledge that certain of the Parties that are political subdivisions may, pursuant to A.R.S. § 38-511, “within three years after its execution, cancel any contract, without penalty or further obligation, . . . if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of [that political subdivision] is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.”
- 19.2 Each of the Parties subject to A.R.S. § 38-511 agrees that if it elects to exercise its cancellation right pursuant to A.R.S. § 38-511 (based upon facts that were not known to it at the time of execution of this Project Contract, or based upon facts known prior to execution if, contrary to the parties’ intentions, such facts would constitute a valid basis for exercising the cancellation right), it shall provide at least twelve (12) months’ notice of such cancellation.

ARTICLE 20
WAIVERS

- 20.1 The Participants acknowledge that certain of the Participants are Tribal Participants. The following provisions will apply if one of the Parties to a dispute is a Tribal Participant.
- 20.1.1 Each Tribal Participant irrevocably waives its sovereign immunity for the limited purposes of any action or arbitration (i) arising out of or pertaining to this Project Contract, (ii) enforcing any agreement to arbitrate a dispute pursuant to Article 16, and (iii) enforcing any arbitration award rendered in an arbitration. Each limited waiver provided herein shall be authorized pursuant to a resolution (copies of which shall be included in **Exhibit C-1** hereto) from either (y) the governing body of the Tribal Participant if duly authorized to waive its sovereign immunity without the approval or consent from its associated Indian Tribe, Nation or Community or (z) the governing body of the Indian Tribe, Nation or Community that is associated with the Tribal Participant if the Tribal Participant is not independently authorized to waive its sovereign immunity. Each Tribal Participant further agrees that it will not raise failure to exhaust federal administrative or tribal administrative or judicial remedies as a defense to any such action. The waivers provided herein are limited to actions filed in the United States District Court for the District of Arizona, and appropriate appellate review, if and to the extent that jurisdiction is otherwise proper in those courts. If jurisdiction is not proper in the above-listed courts, then such waivers shall extend to actions, filed in the courts of the State of Arizona and appropriate appellate review of such courts. If such federal and state courts are finally determined not to have jurisdiction over such action, then the waivers shall extend to actions filed in any court of competent jurisdiction. With respect to actions filed as specified above in a court of the State of Arizona, venue shall be exclusively in the Maricopa County, Arizona, Superior Court. The limited waivers provided herein apply only to Tribal Participants and shall not, under any

circumstances, be interpreted, construed or extended to include any sovereign immunity rights independently or separately held by an Indian Tribe, Nation or Community that is associated with a Tribal Participant.

20.1.2 The limited waivers set forth in this Article 20 shall apply to the enforcement of any agreement to arbitrate under this Project Contract, including a pre-arbitration injunction, pre-arbitration attachment, other order in aid of arbitration proceedings, or the enforcement of any award in arbitration, or orders or judgments in litigation. However, the remedies rendered in any such arbitration or litigation shall be limited to specific performance of this Project Contract or money damages. The court or arbitrator shall have the authority to order execution against (a) any assets or revenues of the Tribal Participant, including without limitation all revenues of such Tribal Participant, excluding all realty owned by the Tribal Participant upon which any assets of such Tribal Participant are located, and (b) proceeds of any applicable insurance policies maintained by the Tribal Participant. In no instance shall any enforcement be allowed against any assets of an Indian Tribe, Nation or Community that is associated with a Tribal Participant, other than the limited assets of the Tribal Participant set forth in this Article.

ARTICLE 21

MISCELLANEOUS

- 21.1 **Severability.** Each provision set forth in this Project Contract is independent and severable from the others, and no restriction will be rendered unenforceable by virtue of the fact that, for any reason, any other or others of them may be unenforceable in whole or in part. If any provision of this Project Contract is unenforceable for any reason whatsoever, that provision will be appropriately limited and given effect to the maximum extent permitted by applicable law.
- 21.2 **Binding Effect.** This Project Contract will be binding upon the Parties' respective successors and assigns, whether by agreement or operation of law.
- 21.3 **Entire Agreement.** This Project Contract, and the Exhibits and Appendices hereto, contain the entire agreement between the parties with regard to the establishment and administration of the Project and supersedes and replaces any and all other agreements, written or oral, made prior to the date of this Project Contract with regard to the same subject matter. All prior negotiations and understandings with regard to the establishment and administration of the Project are merged into this Project Contract. Modification or amendment of this Project Contract will be made only in writing and subscribed to by the parties.
- 21.4 **Construction.** The parties agree that they have had the opportunity to participate in the drafting of this Project Contract and that the respective legal counsel for such Parties has had the opportunity to review this Project Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be applied to the interpretation of this Project Contract. No inference in favor of, or against,

any party may be drawn from the fact that one party has drafted any portion of this Project Contract.

- 21.5 Governing Law. This Project Contract and all questions relating to its validity, interpretation, performance and enforcement will be governed by and construed, interpreted and enforced in accordance with the laws of the State of Arizona.
- 21.6 Notices. Unless otherwise expressly provided for in this Project Contract, all notices to a Party in connection with this Project Contract shall be in writing, and any such notice shall become effective (a) upon personal delivery thereof, including by overnight mail or next Business Day or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of email, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided by either of the methods set forth in clause (a) or (b) above. All notices provided by the means described in clauses (a), (b), or (c) above shall be addressed to SPPA and to Project Participants at the addresses provided in Exhibit E, or to such other address as any Party may designate by written notice to the other Parties. SPPA will update Exhibit E to reflect changes, without the necessity of amending this Project Contract.
- 21.7 Execution in Counterparts. This Project Contract may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

[Signatures on following pages.]

Signature Pages

In Witness Whereof, each Party has executed this Project Contract with the approval of its governing body.

FOR SOUTHWEST PUBLIC POWER AGENCY, INC. ("SPPA"):

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

FOR PROJECT PARTICIPANTS:

AGUILA IRRIGATION DISTRICT

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

AK-CHIN ENERGY SERVICES

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ELECTRICAL DISTRICT NO. 2 OF PINAL COUNTY

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ELECTRICAL DISTRICT NO. 4 OF PINAL COUNTY

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ELECTRICAL DISTRICT NO. 6 OF PINAL COUNTY

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ELECTRICAL DISTRICT NO. 7 OF MARICOPA COUNTY

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ELECTRICAL DISTRICT NO. 8 OF MARICOPA COUNTY

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

GILA RIVER INDIAN COMMUNITY UTILITY AUTHORITY

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

HARQUAHALA VALLEY POWER DISTRICT

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

MARICOPA COUNTY MUNICIPAL WATER CONSERVATION DISTRICT NO. 1

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

MCMULLEN VALLEY WATER CONSERVATION AND DRAINAGE DISTRICT

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

OCOTILLO WATER CONSERVATION DISTRICT

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ROOSEVELT IRRIGATION DISTRICT

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

SAFFORD (CITY OF)

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

TOHONO O'ODHAM UTILITY AUTHORITY

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

TONOPAH IRRIGATION DISTRICT

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

TOWN OF THATCHER

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

TOWN OF WICKENBURG

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

WILLIAMS (City of)

Approved as to Form:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

List of Exhibits and Appendices

- Exhibit A** – Power Purchase Agreement Project Listing of Project Participants
- Exhibit B** – Form of Box Canyon Resale Agreement
- Exhibit C** – Form of Participation Agreement
- Exhibit D** – Project Participants Regulated by Rural Utilities Service (“RUS”)
- Exhibit E** – Notices
- Appendix A-1** – Box Canyon PPA
- Appendix A-2** – Box Canyon Resale Agreement
- Appendix B-1** – Lone Butte PPA
- Appendix B-2** – Lone Butte Resale Agreement
- Appendix C-1** – Copies of Resolutions and Waivers

EXHIBIT A

Power Purchase Agreement Project

Listing of Project Participants

Number	Project Participants
1	Aguila Irrigation District
2	Ak-Chin Energy Services ⁽¹⁾
3	Buckeye Water Conservation & Drainage District
4	Electrical District No. 2 of Pinal County
5	Electrical District No. 3 of Pinal County
6	Electrical District No. 4 of Pinal County
7	Electrical District No. 6 of Pinal County
8	Electrical District No. 7 of Maricopa County
9	Electrical District No. 8 of Maricopa County
10	Gila River Indian Community Utility ⁽¹⁾
11	Harquahala Valley Power District
12	McMullen Valley Water Conservation & Drainage District
13	Maricopa County Municipal Water
14	Ocotillo Water Conservation District
15	Roosevelt Irrigation District
16	Safford (City of)
17	Thatcher (Town of)
18	Tonopah Irrigation District
19	Tohono O'odham Utility Authority ⁽¹⁾
20	Town of Wickenburg
21	Williams (City of)

⁽¹⁾ Tribal Participant

EXHIBIT B

Form of Box Canyon Resale Agreement

EXHIBIT C

Form of Participation Agreement

THIS PARTICIPATION AGREEMENT FOR THE SPPA PROJECT CONTRACT NO. 2021-2 FOR THE POWER PURCHASE AGREEMENT PROJECT (the "Participation Agreement") is entered into as of the ____ day of _____, 202__, ("Participant Effective Date") by and between _____ (the "Participant") and the Southwest Public Power Agency, Inc. ("SPPA").

The Participant [is] [is not] a member of SPPA and is or will be a participant of the Pool Agreement and wishes to participate in the Power Purchase Agreement Project. Accordingly, by the execution and delivery of this Participation Agreement, the Participant acknowledges and agrees to become a "Participant" under the SPPA Project Contract No. 2021-2 (the "Project Agreement"), dated as of _____, 202__, by and among SPPA and the other Participants and under the Resale Agreement ("Resale Agreement"), dated as of _____, 20__, by and among SPPA and the "Participants" that are or have become party thereto. SPPA and, if in existence, the Project Management Committee have approved the participation of the Participant (and authorized SPPA's execution of this Participation Agreement) pursuant to Article 7 of the Project Agreement. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Resale Agreement and the Project Agreement.

The Participant hereby acknowledges, agrees and confirms that, by its execution of this Participation Agreement, as of the date hereof, it shall (without limitation): (i) be deemed to be a signatory to the Project Agreement and the Resale Agreement; (ii) be deemed to have made the representations and warranties set forth in Article 18 of the Project Agreement to SPPA and each other Participant a party thereto [and Article ____ of the Resale Agreement to SPPA and each other Participant a party thereto] on and as of the Participation Effective Date; (iii) agree that the representations made with respect to the Project Agreement [and the Resale Agreement] shall be deemed to include this Participation Agreement, (iv) agree to be bound by the terms of the Project Agreement and the Resale Agreement; (v) agree that each other Participant (under the Project Agreement), each Participant (under the Resale Agreement) and Seller is a third-party beneficiary of this Participation Agreement and the Resale Agreement; and (vi) have all of the rights, remedies, powers, privileges and obligations of a Participant under the Project Agreement and of a Participant under the Resale Agreement from and after the date of this Participation Agreement.

The Participant hereby specifies that its address for notices under Exhibit E of the Project Agreement and Exhibit ____ of the Resale Agreement shall be as follows:

[Participant]
[Street]
[City, State, Zip Code]
Attention:

The following items are attached hereto:

1. An amended Exhibit A of the Project Agreement and an amended Schedule 4.1 of the Resale Agreement, to be effective as of the Participant Effective Date.
2. If the Participant is a tribal entity: A copy of the Participant's waiver of sovereign immunity, which shall be deemed to be included in Exhibit ____ of the Resale Agreement and Appendix C-1 of the Project Agreement.

IN WITNESS WHEREOF, the undersigned have caused their duly authorized officers to sign this Participation Agreement on the date first set forth above.

[PARTICIPANT]

By_____

Name:_____

Title:_____

Southwest Public Power Agency, Inc.

By_____

Name:_____

Title:_____

EXHIBIT D

**Power Purchase Agreement Project
Project Participants Regulated by Rural Utilities Service ("RUS")**

1. Tohono O'odham Utility Authority

EXHIBIT E

Notices

TO SPPA:

Southwest Public Power Agency, Inc.

160 North Pasadena

Suite 101

Mesa, AZ 08201

Attn: Dennis L. Delaney, dld@krsaline.com & Jennifer M Torpey, jmt@krsaline.com with a copy to Sheryl Sweeney, ssweeney@clarkhill.com

TO PARTICIPANTS:

Aguila Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager	Ak-Chin Energy Services 42507 W Peters & Nall Rd Maricopa, AZ 85138 Attention: ACES Board Chairman <i>With a copy to:</i> Ed Gerak, Power Manager Utility Strategies Consulting Group 4645 S. Lakeshore Dr, Suite 16 Tempe, AZ 85282
Buckeye Water Conservation and Drainage District P.O. Box 1726 Buckeye, AZ 85326-0160 Attn: General Manager	City of Safford P.O. Box 272 Safford, AZ 85548 Attn: City Manager
City of Williams 113 South 1 st Street Williams, AZ 86046 Attn: City Manager	Electrical District Number Two of Pinal County Mailing Address: P.O. Box 548 Coolidge, AZ 85128 Physical Address: 5575 N. Eleven Mile Corner Rd. Casa Grande, AZ 85194 Fax: 520-723-5252 Attn: General Manager

Electrical District Number Three of Pinal County 41630 W. Louis Johnson Dr. Maricopa, AZ 85138 Attn: General Manager	Electrical District Number Four of Pinal County P. O. Box 605 Eloy, AZ 85131 Attn: District Manager
[reserved]	Electrical District Number Six 34630 N. Schnepf Rd. San Tan Valley, AZ 85140 Attn: Board President
Electrical District Number Seven of Maricopa County 14629 West Peoria Ave Waddell, AZ 85355 Attn: District Manager	Electrical District Number Eight of Maricopa County 38401 W I-8; Bldg 175 Gila Bend, AZ 85337 Attn: General Manager
Gila River Indian Community Utility Authority 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attn: General Manager <i>With copies to:</i> 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attention: Finance Director The Rothstein Law Firm 80 East Rio Salado Parkway, Suite 710 Tempe, Arizona 85281 Attn: Denten Robinson	Harquahala Valley Power District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager
Maricopa Water District P.O. Box 900 Waddell, AZ 85355-0900 Attn: General Manager	McMullen Valley Water Conservation & Drainage District P.O. Box 70 Salome, AZ 85348 Attn: General Manager
[reserved]	Ocotillo Water Conservation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager

Roosevelt Irrigation District 103 West Baseline Road Buckeye, AZ 85326 Attn: Superintendent	Tohono O'odham Utility Authority P.O. Box 816 Sells, AZ 85634 Attn: General Manager
Tonopah Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Administrator	Town of Thatcher P. O. Box 670 Thatcher, AZ 85552 Attn: Town Manager
Town of Wickenburg 155 N Tegner Street Suite A Wickenburg, AZ 85390 Attn: Town Manager	

APPENDIX A-1

**Power Purchase Agreement Project
Box Canyon Power Purchase Agreement**

APPENDIX A-2

**Power Purchase Agreement Project
Box Canyon Resale Agreement (“Resale” Agreement)**

Appendix C-1

Copies of Resolutions and Waivers

RESOLUTION NO. 1420

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF WILLIAMS,
APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY
OF THE BOX CANYON RESALE AGREEMENT**

WHEREAS, Southwest Public Power Agency, Inc. ("SPPA") intends to enter into a power purchase agreement (the "Box Canyon PPA") to acquire the output of a combined photovoltaic and battery storage facility.

WHEREAS, The City of Williams ("Williams"), SPPA, and certain SPPA Members wish to enter into an agreement that enables SPPA to pass through a share of the benefits and obligations of the Box Canyon PPA to such participants, including Williams.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Williams that:

1. The Box Canyon Resale Agreement between Southwest Public Power Agency and Participants, (the "Box Canyon Resale Agreement"), between Williams, SPPA and the entities listed as signatories in the Box Canyon Resale Agreement, as presented to the City Council of Williams, a copy of which is attached hereto as **Exhibit A**, is hereby approved.

2. The Mayor and any other officer of Williams are authorized to execute the Box Canyon Resale Agreement with only such changes as approved by the signatory, in consultation with Williams's legal counsel. From and after the execution and delivery of the Box Canyon Resale Agreement, the officers of Williams are hereby authorized and directed to perform all acts, execute and deliver all documents and to take such other steps necessary or convenient to implement and perform the provisions of the Box Canyon Resale Agreement.

Adopted this ____ day of _____, 2022.

Mayor John W. Moore
Attest:

City Clerk Pamela Galvan

EXHIBIT A

Box Canyon Resale Agreement

Box Canyon Resale Agreement

between

Southwest Public Power Agency

and

Participants

This Box Canyon Resale Agreement (“Agreement”) is made this ____ day of _____, 202_, (the “Effective Date”) by and among Southwest Public Power Agency (hereinafter “SPPA”), a political subdivision of the State of Arizona, organized and existing under the laws of the State of Arizona, including particularly the Act, and the other Persons that executed this Agreement as of the Effective Date or that become a party hereto thereafter (hereinafter “Participants” or, at times, individually as “Participant”). SPPA and Participants hereinafter referred to collectively as “Parties” or, at times, individually as “Party”.

WITNESSETH:

WHEREAS, SPPA consists of members (“Members”) which are (i) governmental entities organized and existing under the laws of the State of Arizona, and (ii) authorized by such laws to engage in the local distribution and sale of electric power and energy; and

WHEREAS, SPPA is authorized under Sections 2(n) and 4 of its IGA to contract with its Members to establish projects for the purchase, sale, generation and transmission of electricity for the purpose of securing an adequate economical and reliable supply of electricity and related products for its Members; and

WHEREAS, SPPA and its Members have established the SPPA Power Purchase Project Agreement, SPPA Project Contract 2021-2, pursuant to the [date], which authorizes SPPA to enter into power purchase agreements with Sellers to obtain Energy, Capacity Rights, Ancillary Services and Environmental Attributes for the benefit of subscribing Participants, and

WHEREAS, SPPA is authorized by Section 5(b) of the IGA to allow eligible non-member entities to participate in such Projects (Members and such nonmember entities participating in Projects to be referred to collectively as “Participants”); and

WHEREAS, Participants own and operate retail electric systems; and

WHEREAS, Participants are authorized under the laws of the State of Arizona to contract to buy from SPPA Energy, Capacity Rights, Ancillary Services and Environmental Attributes to meet a Participant’s present and future requirements; and

WHEREAS, SPPA intends to enter into a power purchase agreement to acquire the output of a combined photovoltaic and battery storage facility from Seller for a period of twenty (20) years commencing on the Delivery Start Date (the “Box Canyon PPA” as defined below in Article One), whereunder SPPA will purchase, on a combined basis and on behalf of the Participants, all usable output from the Box Canyon facility, including but not limited to the Energy, Capacity Rights, Ancillary Services and Environmental Attributes of Box Canyon (hereinafter referred to as the “Product” and which is defined in Article One), as components of the Product becomes available; and

WHEREAS, this Agreement is intended to enable SPPA to pass through a share of the benefits and obligations of the Box Canyon PPA to Participants, such that neither SPPA nor Participants obtain a benefit or incur a burden or obligation due to a drafting or other difference between this Agreement and the Box Canyon PPA.

NOW, THEREFORE, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE ONE: DEFINITIONS

Any capitalized words used but not defined in this Agreement or its Schedules shall have the meaning as defined in the Box Canyon PPA or the SPPA Project Contract 2021-2. Any definitions from the Box Canyon PPA (whether explicitly defined herein or not) shall automatically reflect the definitions from the Box Canyon PPA as it may be amended from time to time.

Act means A.R.S. Section 11-952, as amended, and all laws amendatory or supplemental thereto.

Agreement means this Box Canyon Resale Agreement between Participants and SPPA.

Ancillary Services is defined in Exhibit A of the Box Canyon PPA.

Box Canyon PPA means the Power Purchase Agreement between SPPA and Seller for the period commencing on _____, as amended from time to time.

Business Day means any weekday (*i.e.*, other than Saturday or Sunday) that is not a holiday observed by the Federal Reserve.

Buyer Default Security is defined in Exhibit A of the Box Canyon PPA.

Buyer Working Capital Reserve Account is defined in Exhibit A of the Box Canyon PPA.

Buyer Working Capital Reserve Amount shall be the amount determined and specified in Exhibit H of the Box Canyon PPA.

Capacity Rights is defined in Exhibit A of the Box Canyon PPA.

Commercial Operation Date means the date that the Box Canyon facility achieves Commercial Operation as Commercial Operation as defined in the Box Canyon PPA.

Contract Interest Rate is defined in Exhibit A of the Box Canyon PPA.

Contract Year means any consecutive twelve (12) month period during the term of the Box Canyon PPA, commencing at 00:00 hours on the Commercial Operation Date or any of its anniversaries and ending at 24:00 hours on the last day of such twelve (12) month period.

Delivery Point means SRP 230-KV Abel Substation.

Delivery Start Date means the date on which the Box Canyon facility begins delivering all or a portion of the Product and SPPA has the obligation to accept that delivery, as further defined in the Box Canyon PPA.

Effective Date means the date as of which this Agreement has been executed by SPPA and the initial Participants, as reflected on the signature page(s). For new Participants after the original Effective Date, the Effective Date will be the date when both the new Participant and SPPA have executed the form of Participation Agreement attached as Exhibit A.

Energy means electricity, measured in kWh or MWh, as the case may be.

Environmental Attributes are defined in Exhibit A of the Box Canyon PPA.

Event of Default shall have the meaning assigned to it in Section 11.1.

FERC means the Federal Energy Regulatory Commission, or its successor in function.

Governmental Authority means (a) any supranational, federal, state, local, municipal, tribal or other government or (b) any other governmental, quasi-governmental, regulatory or administrative agency, commission or other authority (including FERC, NERC and any applicable regional reliability entity) lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, policy, regulatory or taxing authority or power. Governmental Authority does not include SPPA or the Participants.

Green Tag is defined in Exhibit A of the Box Canyon PPA.

Green Tag Reporting Rights are defined in Exhibit A of the Box Canyon PPA.

IGA means the Intergovernmental Agreement among SPPA's members dated July, 31, 2014, which caused SPPA to be created.

Members means all members of SPPA, who are party to the IGA.

NERC means the North American Electric Reliability Corporation.

Participant means each SPPA Pool Participant that (i) has agreed to participate in this Project by executing the SPPA Power Purchase Project Agreement as of the Effective Date thereof (or for new Participants after the Effective Date, by executing a form of Participation Agreement attached thereto as Exhibit A); and (ii) has executed this Agreement as of the Effective Date hereof (or for new Participants after the Effective Date, that have executed a form of Participant Agreement attached hereto as Exhibit A), and in each case its permitted successors and assigns.

Participant Entitlement means the amount of Product which is the Participant's individual allocation of Product from the Box Canyon PPA. The initial Participant Entitlement is set forth in Schedule 4.1. Any Participant Entitlement may be adjusted from time to time pursuant to this Agreement, beginning on the first day of the month following the Delivery Start Date of the Box Canyon facility.

Participant Percentage means the fraction equal to the Participant Entitlement divided by SPPA's purchase amount under the Box Canyon PPA, expressed as a percentage.

Participation Agreement means an agreement signed by SPPA and a new Participant after the Effective Date of this Agreement, whereby such entity becomes a new Participant. A form of Participation Agreement is attached as Exhibit A.

Payment Default shall have the meaning assigned to it in Section 11.1(a).

Person means an individual, a corporation, a partnership, a limited liability company, a tribal entity, an association, a joint-stock company, a trust, an unincorporated organization or any government or political subdivision thereof.

Pool Agreement means the September 1, 2014 SPPA Project Agreement for the SPPA Pool among SPPA and certain of its Members, pursuant to which SPPA acquires and manages resources for the benefit of the SPPA Pool, as such agreement may be amended from time to time.

Product is defined in Exhibit A of the Box Canyon PPA.

Prudent Electrical Practices are defined in Exhibit A of the Box Canyon PPA.

Seller means the counterparty to SPPA under the Box Canyon PPA, or its permitted successors and assigns.

Seller's Cost to Cover is defined in Exhibit A of the Box Canyon PPA.

Settlement Amount is defined in Exhibit A of the Box Canyon PPA.

Service Month means the month in which Product from Box Canyon is delivered.

Solar Project Account-Box Canyon means the operating sub-account into which SPPA deposits the payments by Participants in the Box Canyon PPA and out of which it pays the expenses associated with the Box Canyon PPA. This account is separate from the Buyer Working Capital Reserve Account.

SPPA means the Southwest Public Power Agency, Inc. and its permitted successors and assigns. SPPA is a political subdivision of the State of Arizona created pursuant to the IGA, under the authority granted under the Act.

SPPA Energy Management Agreement means the September 5, 2018 Amended and Restated Energy Management Agreement between SPPA and Arizona Electric Cooperative (“AEP Co”) wherein SPPA appoints AEP Co as the Administrative and Scheduling Agent for the SPPA Pool, as that agreement may be amended from time to time.

SPPA Pool means the power pool created by SPPA and some of its Members under Pool Agreement as such agreement may be amended from time to time.

SPPA Pool Management Committee means the Committee created under Article Seven of the Pool Agreement as such agreement may be amended from time to time.

SPPA Pool Participant means the parties, other than SPPA, to the Pool Agreement.

SPPA Power Purchase Project Agreement means the SPPA Project Contract No. 2021-2 (Power Purchase Agreement Project) or any substantially identical agreement entered into among SPPA and Participants.

Term means the period in which this Agreement is in effect as set forth in Article Two.

Test Energy is defined in Exhibit A of the Box Canyon PPA.

Transmission Costs means Participant’s properly allocable share of all transmission-related costs paid by SPPA for the month that are directly related to the delivery to Participant of Energy from Box Canyon and that are not otherwise reimbursed to SPPA by the Participant pursuant to any other agreement between the Parties. Such transmission-related costs may include, without limitation, costs of upgrades, and any costs associated with Transmission Congestion Rights, in each case arising in connection with the Box Canyon facilities.

Tribal Participant means a Participant that is a tribal utility of its respective Indian Tribe, Nation, and/or Community.

ARTICLE TWO: TERM

2.1 Term. This Agreement shall be effective and binding upon execution by the Parties as reflected on the signature page(s) below (or for later joining Parties, upon the date of execution of the form of Participation Agreement attached as Exhibit A), and (absent earlier termination as permitted hereunder) shall continue in effect until termination of the Box Canyon PPA. Deliveries shall commence on the Delivery Start Date and continue through the end of the Term.

- (a) Member Terminations. Except as provided in this Section 2.1, the participation of individual Participants may not be terminated. If a Participant seeks to terminate its Participant Entitlement pursuant to Section 9.2, it shall provide written notice to SPPA and follow the procedures laid out in Section 9.2.
- (b) SPPA may terminate the Agreement as to an individual Participant in the event that such Participant is in default, pursuant to the provisions of Article Eleven.

ARTICLE THREE: RELATIONSHIP TO OTHER CONTRACTS

3.1 Minimum Execution Level. SPPA is authorized to execute the Box Canyon PPA upon SPPA's receipt of an executed version of this Agreement or a Participation Agreement by Participants to purchase and pay for, in the aggregate, at least seventy-five percent (75%) of the Product. Participants agree that the execution of this Agreement or a Participation Agreement shall be deemed Participant's full consent and agreement that SPPA, upon SPPA's execution of Box Canyon PPA and prior to the Buyer Working Capital Reserve Account funding date, shall increase each Participant's initial percentage subscription to Box Canyon pro rata to all Participants, such that all Product is allocated to the Participants upon the Commercial Operation Date.

3.2 SPPA Management. SPPA will manage the Box Canyon PPA for the benefit of the Participants. SPPA's designated Administrative and Scheduling Agent will schedule and dispatch the resource pursuant to the terms of the Pool Agreement and the SPPA Energy Management Agreement.

3.3 SPPA Pool Resource Designation. SPPA and the Participants designate the Box Canyon PPA as a SPPA Pool Resource, in accordance with the terms of the SPPA Pool Agreement. SPPA will optimize the Box Canyon PPA with the other SPPA Pool Resources for the benefit of Participants.

3.4 Transmission. To the extent available, SPPA will use existing transmission entitlements that SPPA has arranged or that Members and Participants have designated as SPPA Pool Resources, or otherwise made available to SPPA to transmit the applicable Product from the Box Canyon facility from the Delivery Point to Participant loads. To the extent that SPPA and the Participants do not have sufficient transmission rights to effect delivery to Participant loads, it may be necessary for SPPA or such Participants to secure additional transmission arrangements. Such Participants shall obtain such arrangements at

their own expense, or reimburse SPPA for the expense of acquiring transmission for them. Payments from Participants for such additional transmission will be collected pursuant to a separate agreement, and will be handled outside of the Buyer Working Capital Reserve Account.

ARTICLE FOUR: PURCHASE AND SALE

4.1 Product. Subject to and in accordance with the terms and conditions of this Agreement during the contract Term, SPPA shall sell and make available to Participants at the Delivery Point, or as otherwise provided, and Participants shall purchase and pay for Product in amounts set forth in Schedule 4.1 of the Box Canyon PPA, such amounts to be scheduled in accordance with the provisions of the Pool Agreement.

4.2 Firmness. Energy produced by the photovoltaic portion of Box Canyon and Energy produced by discharge of the batteries will be scheduled as directed by SPPA's scheduling agent. Ancillary Services and Capacity Rights will be utilized as directed by SPPA or SPPA's scheduling agent for monetization (per and subject to the provisions of Section 4.6 of the Box Canyon PPA and Section 4.3 and Section 4.5 of this Agreement).

4.3 Resource Adequacy. To the extent regulatory requirements or market structure changes result in the establishment of a resource adequacy requirement or other form of capacity demonstration obligation in any balancing authority area where any Participant's load is located that requires such participant to identify specific generating resources underlying its firm power contracts, such participant shall be permitted to designate the Box Canyon facility as such capacity (up to an amount equal to the product of the amount of the Box Canyon capacity qualified for resource adequacy purchased by SPPA under the PPA and such Participant's Participant Entitlement of Capacity Rights).

4.4 Title and Risk of Loss. Title to and risk of loss related to Product shall transfer from SPPA to Participants at the Delivery Point or at such other time as specified in the Box Canyon PPA. SPPA will deliver to Participants the Product, free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to delivery, at the Delivery Point; provided, however that title to Green Tags shall transfer in accordance with the procedures of the registrar of the Green Tags.

4.5 Participant's Entitlement. Beginning on the Delivery Start Date, Participant shall purchase its Participant Percentage of the Product that SPPA purchases pursuant to the terms and conditions of the Box Canyon PPA. It is the intent of SPPA and the Participants that each Participant's Participant Percentage of the benefits and obligations accruing to SPPA under the Box Canyon PPA shall be flowed through to the Participant pursuant to this Agreement. Accordingly, in the event of a conflict between the terms of this Agreement and the Box Canyon PPA, the terms of the Box Canyon PPA shall prevail and Parties shall look to the terms of the Box Canyon PPA to resolve such conflict. The Participant Entitlements and Participant Percentages of all Participants shall be set forth in Schedule 4.1 attached to this Agreement. SPPA will update Schedule 4.1 periodically as necessary, including without limitation to reflect changes resulting from actions taken

pursuant to Articles Nine, Eleven, and Twelve, and/or any other applicable provision of this Agreement.

4.6 Cost Responsibility. Each Participant will pay its allocable share (as determined pursuant to this Article Four) of (a) all charges SPPA incurs for Product in connection with the Box Canyon PPA, (b) any other charges SPPA incurs under or in connection with the Box Canyon PPA, including but not limited to Buyer Default Security and funding the Buyer Working Capital Reserve Amount, and (c) all transmission costs SPPA incurs to deliver the Energy from the Delivery Point to the Participant; and (d) SPPA's administrative and other reasonable costs associated with its management of Box Canyon (which shall include an allocable share of SPPA's general costs of providing services that are not directly assignable to any given project) ("SPPA A&G"). Participant's obligation to pay for its allocable share of such costs, including Participant's share of the Buyer Working Capital Reserve Amount, shall be paid in accordance with Sections 4.7, 4.8 and 4.9 and shall continue until all amounts due hereunder are paid in full notwithstanding the occurrence of any event, the availability of the Product, or the taking of any action permitted by the Box Canyon PPA obligations such as payment of Sellers' Cost to Cover, the need to fund Buyer Working Capital Reserve Amount, post Buyers' Default Security or the computation of a Settlement Amount due from Buyer). The provisions that follow are intended to implement, but not to narrow, this intention.

4.7 Buyer Working Capital Reserve Account. In accordance with the terms of the Box Canyon PPA, SPPA will establish a Buyer Working Capital Reserve Account with a starting balance 30 days prior to the expected Commercial Operation Date and throughout the Term of at least the Buyer Working Capital Reserve Amount. The Buyer Working Capital Reserve Account will be a segregated and dedicated SPPA fund, and amounts in the Buyer Working Capital Reserve Account may only be used by SPPA to make payments to Seller that are due and payable pursuant to the Box Canyon PPA, including without limitation, if a Participant has failed to timely pay its share of such amount in accordance with Section 4.9, 9.2 and/or 11.2. To fund the starting balance of the Buyer Working Capital Reserve Account, each Participant shall pay to SPPA its Participant Percentage of the starting balance of the Buyer Working Capital Reserve Amount by a date established by SPPA (no later than 45 days prior to the expected Commercial Operation Date). Except to the extent that Participants have been required to step-up their participation pursuant to Article Sixteen or to cover a default by another Participant under Article Twelve, SPPA may only use a Participant's contribution to the Buyer Working Capital Reserve Account to pay that Participant's Participant Percentage of a Seller invoice. For the avoidance of doubt, SPPA may not use one Participant's contribution to the Buyer Working Capital Reserve Account to pay another Participant's Participant Percentage of a Seller Invoice unless there has been a re-allocation pursuant to Article Twelve or Article Sixteen. When the Box Canyon PPA terminates and all obligations have been satisfied, all Non-Defaulting Participants shall receive their Participant Percentage of the Buyer Working Capital Reserve Account. When a Participant terminates its participation by transferring its Entitlement to others, its share of the Buyer Working Capital Reserve Account will be returned to it, once all its obligations have been satisfied and the transferee(s) have funded their share of the Buyer Working Capital Reserve Amount obligations. A Defaulting Participant will receive the amount of its share of the Buyer Working Capital Account that

remains, if any, after its obligations under this Agreement are satisfied including any costs provided by SPPA due to Participant's default. Notwithstanding the foregoing or anything else in this Agreement to the contrary, Participants acknowledge and expressly consent that the Buyer Working Capital Reserve Account will be subject to an Account Control Agreement in favor of Seller in the event of a default by SPPA pursuant to the Box Canyon PPA.

4.8 Reserved

4.9 Payment Obligation. Starting prior to the Delivery Start Date, pursuant to the Box Canyon PPA, SPPA shall invoice each Participant and Participant shall pay its properly allocable share of all of SPPA's forecasted costs related to the Box Canyon PPA and forecasted SPPA A&G and any additional transmission costs. SPPA's invoicing procedures will be as follows:

- (a) On or before the 25th of the month that is prior to each Service Month, SPPA will issue an invoice to each Participant of the estimated costs SPPA expects to incur for each such Service Month, including but not limited to costs pursuant to the Box Canyon PPA, Transmission Costs, and SPPA A&G. Participant acknowledges that initial invoices from SPPA for a Service Month shall be premised on forecasts of the energy production during the Service Month and forecasts of SPPA expenses. Participant agrees that such invoices shall reflect estimates of all SPPA costs associated with the Box Canyon for the applicable Service Month and Participant will pay such invoices notwithstanding the use of forecasts and estimates.
- (b) On or before the 10th day of each Service Month (or the next Business Day if the 10th day of the Service Month is not a Business Day), the Participant shall pay SPPA in accordance with SPPA's payment instructions no less than the amount SPPA invoiced the Participant in accordance with Section 4.9(a). In addition to any other action SPPA may take with respect to a late payment, SPPA shall assess interest on all amounts not received by SPPA before the payment due date established by this Section 4.9(b). Interest shall accrue at the Contract Interest Rate over the actual number of days elapsed from the payment due date to the date such amounts are paid.
- (c) Participant's administrative charge each month shall be (i) an amount established by SPPA from time to time based on SPPA's budget, plus (ii) where applicable, Participant's portion of SPPA's costs incurred in the prior month that are related to Box Canyon but were not included in SPPA's budget. If SPPA acquires additional transmission rights for the benefit of one or more (but less than all) Participants, the cost of those additional rights shall be paid by those Participants according to their proportionate usage of such transmission.
- (d) Upon receipt of final invoices for all costs associated with the Service Month, SPPA shall compare Participant's pro rata share of all such costs

with the estimated amount SPPA invoiced Participant pursuant to Section 4.9(a). Any overpayments by Participant shall be credited on the next invoice provided to Participant, and any underpayments shall be added to the next invoice provided to Participant. To the extent SPPA receives credits or payments from the Seller pursuant to the terms of the Box Canyon PPA, SPPA shall maintain books and records to reflect that such credits or payments will be allocated pro rata for the benefit of the Participants. SPPA shall, in its reasonable discretion, apply such credits or payments to offset the Participants' requirement to purchase replacement Product if Box Canyon PPA Product is not available or to offset the Participants' cost responsibilities under the Box Canyon PPA.

4.10 Funding of Buyer Default Security. If, pursuant to Section 7.4.3 of the Box Canyon PPA, SPPA must post the Buyer Default Security, SPPA shall notify the Participants of the posting requirement and each Participant's share of the Buyer Default Security as soon as practicable but no later than ten (10) Business Days after the occurrence of the event giving rise to such obligation, after SPPA becomes aware of its need to post the Buyer Default Security. Participant shall, as soon as practicable after notice from SPPA but no later than 5 months from the date of such notice, take all such action, including the payment of funds to SPPA or arrangements for credit, as applicable, as SPPA may reasonably require in order for SPPA to post and maintain the Buyer Default Security.

ARTICLE FIVE: DISPUTES REGARDING BILLING AND PAYMENTS

5.1 Disputes. If Participant disputes any bill issued hereunder or the existence or extent of any obligation to make any payment hereunder, it shall nevertheless make payment of all bills when due in full with a written protest, submitted at the time of or subsequent to such payment, directed to SPPA. Any such protest shall be subject to the limitations set forth in Section 5.2. When any dispute regarding payment is resolved, any refunds due shall be paid (or credited) within ten (10) days thereafter, based upon the actual number of days elapsed from the date paid until the date refunded or offset.

5.2 Restriction on Challenges. If a Participant questions or disputes the correctness of any invoice submitted to it by SPPA, the Participant shall make any net payment to SPPA as reflected on the invoice when due. The Participant may request an explanation of any amounts due to or from SPPA as soon as practicable, but in no event later than twenty-two (22) months of the receipt of such billing statement (or, if earlier, two months prior to any deadline for billing challenges under any Box Canyon PPA that is involved in the disputed invoice). SPPA shall review the relevant invoice. If the bill is determined to be incorrect, SPPA shall issue corrected invoices and make all payment adjustments with affected Participants as necessary to correct the error. No interest shall apply to such adjusted amounts. If SPPA and the Participant fail to agree on the correctness of a bill within thirty (30) days after the explanation has been requested, such dispute shall be resolved pursuant to Article Ten herein.

5.3 Pass-Through of Refunds.

- (a) If, pursuant to the Box Canyon PPA, SPPA receives any refund (as opposed to credits against its monthly bills, which will simply reduce SPPA's costs to be passed through to Participant hereunder) of any of its Box Canyon costs, it shall promptly credit Participant on Participant's next monthly bill an allocable share of such refund based on the same methodology and percentage or billing determinant(s) that were originally used to collect from Participant the charges to which the refund relates.
- (b) If SPPA receives any refund (as opposed to credits that simply reduce SPPA's costs to be passed through to the Participant hereunder) of any market charges or transmission charges, it shall promptly credit Participant on Participant's next monthly bill an allocable share of such refund based on the same methodology and percentage or billing determinant(s) that were originally used to collect from Participant the charges to which the refund relates; provided that if a Participant is in breach or default of its obligations under this Agreement, SPPA may deposit such refund amounts in the Buyer Working Capital Reserve Account for use as permitted hereunder until such time as Participant cures such breach or default.

5.4 Unconditional Nature of Payment Obligation. All amounts payable by Participant under this Agreement shall be due irrespective of the actual availability of Product, and such payments shall not be subject to any reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be conditioned upon the performance or nonperformance of SPPA or any other person under this Agreement or any other agreement for any cause whatsoever.

ARTICLE SIX: RESERVED

ARTICLE SEVEN: INFORMATION REGARDING PROJECT

7.1 SPPA Budgets. SPPA's annual budget will include allocations to the Power Purchase Agreement Project which is the subject of SPPA Project Contract No. 2021-2. Participants shall have the right to review and have input on the SPPA budget via the SPPA Board of Directors.

ARTICLE EIGHT: LIABILITY AND INDEMNIFICATION

8.1 Except as provided below in Article Twelve, the Participants shall, severally and not jointly, indemnify and hold SPPA and SPPA's directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all liability (including third-party claims, losses, damages, attorneys' fees, and litigation costs) that SPPA may sustain or suffer as a result of performance by SPPA or SPPA's agent of SPPA's obligations under this Agreement. Such indemnity shall not apply (i) to the extent such liability is covered by insurance, and/or (ii) if and to the extent that such liability was caused directly or indirectly by the fraud, gross negligence, willful misconduct, or breach of obligation under this Agreement of SPPA or SPPA's agent; provided, however, that,

notwithstanding such exclusion, such indemnity shall apply if and to the extent that the conduct of SPPA or SPPA's agent that would otherwise give rise to such exclusion was undertaken specifically at the express direction of the SPPA Pool Management Committee and was reasonably necessary in order to carry out such direction.

8.2 If a customer of a Participant makes a claim or brings an action against one or more of the other Participants for any death, injury, loss, or damage arising out of or in connection with this Agreement, the Participant whose customer is making the claim shall indemnify and hold harmless SPPA and the other Participants and their directors, officers, attorneys, employees, subcontractors, agents and assigns from and against any liability for such death, injury, loss, or damage, unless such claim or action arises from the gross negligence or willful misconduct of SPPA, SPPA's agent, or the other Participant(s).

ARTICLE NINE: ASSIGNMENT

9.1 Assignment. This Box Canyon Resale Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the Parties; provided, however, that neither this Agreement nor any interest herein shall be transferred or assigned by any Participant except with the consent, in writing, (a) of SPPA and the other Participants, which consent shall not be unreasonably withheld, and (b) if and as necessary, of Seller. SPPA shall not assign this Agreement. Any Person taking assignment of this Agreement from a Participant shall agree in writing to be bound by the provisions of this Agreement, and as a condition to such assignment shall fund its portion of the Buyer Working Capital Reserve Account on or before the date of such assignment.

9.2 Voluntary Transfer of Participant Entitlement to Other Participant(s). For any reason, the Participant shall have the option of seeking to terminate its Participant Entitlement by transferring its Participant Entitlement to one or more other Participants. No provision in this Section 9.2 shall operate or be interpreted so as to relieve a Participant of any obligation to make a payment already due, relieve the Participant of any suspension by SPPA pursuant to Section 11.2, prevent or otherwise delay the Participant's termination pursuant to Section 11.2(d), or prevent or otherwise delay the permanent reallocation of Participant's Participant Entitlement pursuant to Article 12. In the event a Participant can and elects such termination under this Section 9.2, SPPA shall undertake or cause to be undertaken the following actions in the order indicated:

- (a) SPPA shall offer to allow each Participant that is not in default to acquire a pro-rata portion of the Participant Entitlement of the Participant seeking to terminate. Any part of the Participant Entitlement of the Participant seeking to terminate that shall be declined by any non-defaulting Participant shall be reoffered pro rata to the non-defaulting Participants that have accepted in full the first such offer. Such reoffering shall be repeated until the Participant Entitlement of the Participant seeking to terminate shall have been reallocated in full or until all non-defaulting Participants shall have declined to take any additional portion of such defaulting Participant's Participant Entitlement.

- (i) If the Participant Entitlement of the Participant seeking to terminate has been fully reallocated to one or more non-defaulting Participants, that Participant shall be permitted to terminate its Participant Entitlement.
 - (ii) If the Participant Entitlement of the Participant seeking to terminate has not been fully reallocated to one or more non-defaulting Participants, that Participant may request that SPPA market the unallocated portion to eligible non-participants. Such buyers must agree to become Participants by executing the form of Participation Agreement attached as Exhibit A. The new Participants must meet any eligibility requirements to become Participants if they are not already. In no event shall any transfer be permitted if it would jeopardize the tax-exempt status of any bonds issued by SPPA.
 - (iii) If SPPA does not succeed in remarketing the unallocated portion, that Participant shall not have the option of terminating its Participant Entitlement.
- (b) In the event of a termination of any Participant and reallocation of its Participant Entitlement pursuant to this Section 9.2, SPPA shall prepare a revised Schedule 4.1 reflecting the revised Participant Entitlements and Participant Percentages of all Participants.

9.3 Timing of Transfer of Funds. Notwithstanding anything to the contrary herein, no assigning Participant (a) shall be relieved of its obligations hereunder, (b) shall be entitled to receive any remaining amount of its share of Working Capital Reserve Amount, or (c) shall be entitled to a return of any of its posted security, in each such case, until the assignee(s) of such assigning Participant has fully funded its share of the Working Capital Reserve Amount and provided any posted security that is required of any assignee Participants.

ARTICLE TEN: DISPUTE RESOLUTION

10.1 Any controversy between or among two or more of the Parties hereto, arising out of or relating to this Agreement, or any breach hereof or default hereunder, may be submitted to binding arbitration upon agreement of the Parties in the dispute, or otherwise may be resolved in any court of competent jurisdiction. (subject to Section 10.4 if any Tribal Participants are parties to the dispute). Provided, however, that no Party shall seek to arbitrate or litigate a controversy between or among the Parties without the Party's most senior executive first attempting in good faith to resolve the dispute with the most senior executive(s) of the other Party(ies) involved in the dispute. Such executives shall decide, within ten (10) Business Days of a written notice of the dispute, the maximum period during which they will attempt to resolve the dispute before any Parties may initiate arbitration or litigation. If such executives fail for any reason to agree upon a maximum period during which they will attempt to resolve the controversy, then the maximum period shall end forty-five (45) days after the written notice of dispute.

10.2 EACH OF THE PARTIES WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BETWEEN OR AMONG TWO OR MORE OF THE PARTIES TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.3 The prevailing Party(ies) shall be entitled to recover from the opposing Party(ies) involved in any litigation hereunder the prevailing Party's reasonable attorneys' fees and costs (including reasonable expert witness fees) incurred in connection with such litigation.

10.4 The Participants acknowledge that certain of the Participants are Tribal Participants. The following provisions will apply if one of the Parties to a dispute is a Tribal Participant.

- (a) Each Tribal Participant irrevocably waives its sovereign immunity for the limited purposes of any action or arbitration (i) arising out of or pertaining to this Agreement, (ii) enforcing any agreement to arbitrate a dispute pursuant to Article Ten, and (iii) enforcing any arbitration award rendered in an arbitration. Each limited waiver provided herein shall be authorized pursuant to a resolution (copies of which shall be included in Exhibit B hereto) from either (y) the governing body of the Tribal Participant if duly authorized to waive its sovereign immunity without the approval or consent from its associated Indian Tribe, Nation or Community or (z) the governing body of the Indian Tribe, Nation or Community that is associated with the Tribal Participant if the Tribal Participant is not independently authorized to waive its sovereign immunity. Each Tribal Participant further agrees that it will not raise failure to exhaust federal administrative or tribal administrative or judicial remedies as a defense to any such action. The waivers provided herein are limited to actions filed in the United States District Court for the District of Arizona, and appropriate appellate review, if and to the extent that jurisdiction is otherwise proper in those courts. If jurisdiction is not proper in the above-listed courts, then such waivers shall extend to actions filed in the courts of the State of Arizona and appropriate appellate review of such courts. If such federal and state courts are finally determined not to have jurisdiction over such action, then the waivers shall extend to actions filed in any court of competent jurisdiction. With respect to actions filed as specified above in a court of the State of Arizona, venue shall be exclusively in the Maricopa County, Arizona, Superior Court. The limited waivers provided herein apply only to Tribal Participants and shall not, under any circumstances, be interpreted, construed or extended to include any sovereign immunity rights independently or separately held by

an Indian Tribe, Nation or Community that is associated with a Tribal Participant.

- (b) The limited waivers set forth in this Section 10.4 shall apply to the enforcement of any agreement to arbitrate under this Agreement, including a pre-arbitration injunction, pre-arbitration attachment, other order in aid of arbitration proceedings, or the enforcement of any award in arbitration, or orders or judgments in litigation. However, the remedies rendered in any such arbitration or litigation shall be limited to specific performance of this Agreement or money damages. The court or arbitrator shall have the authority to order execution against (a) any assets or revenues of the Tribal Participant, including without limitation all revenues of such Tribal Participant, excluding all realty owned by the Tribal Participant upon which any assets of such Tribal Participant are located, and (b) proceeds of any applicable insurance policies maintained by the Tribal Participant. In no instance shall any enforcement be allowed against any assets of an Indian Tribe, Nation or Community that is associated with a Tribal Participant, other than the limited assets of the Tribal Participant set forth in this Section.

10.5 In no event shall any Party be liable to any other Party for indirect, special, consequential or exemplary damages arising out of or in any way related to this Agreement.

10.6 Agency Jurisdiction. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that a dispute over which a Governmental Authority has exclusive jurisdiction shall, in the first instance, be brought before and resolved by such Governmental Authority.

ARTICLE ELEVEN: DEFAULT AND REMEDIES

11.1 Events of Default. The following shall be Events of Default under this Agreement:

- (a) The failure of Participant to make a payment when due under this Agreement, including to timely pay any invoice or post any required security under this Agreement (in each such case, a "Payment Default"); or
- (b) The failure of Participant to take any action required under this Agreement or as reasonably requested by SPPA under this Agreement or in furtherance of SPPA's obligations under the Box Canyon PPA; or
- (c) Assignment of this Agreement by Participant, other than as permitted pursuant to Article Nine or any other action or omission by Participant that would cause SPPA to be in breach of any provision of the Box Canyon PPA; or
- (d) The failure of a Party to perform or abide by any other material obligation under this Agreement within 60 days of receipt of written notice of non-performance; provided, however, that if such default cannot be cured within

such 60-day period, no Event of Default shall occur for so long as the non-performing Party is diligently pursuing a cure, and such non-performance is curable; or

- (e) The commencement, with respect to a Party, by such Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights or a petition is presented or instituted for its winding-up or liquidation.

11.2 Remedies for Payment Default. In addition to any other available remedy for default, in the event of a Participant Payment Default, the following provisions shall apply:

- (a) If a Participant does not timely pay an invoice in accordance with Section 4.9(b), a Payment Default by such Participant shall be deemed to have occurred as of the day after such invoice was due and payable and SPPA shall promptly send notice to the defaulting Participant of such Payment Default.
- (b) Following SPPA's declaration of a Payment Default, SPPA may use that Participant's share of Buyer Working Capital Reserve Account to pay when due the Participant's share of any invoice SPPA has received for the Product. To the extent that SPPA uses funds in the Buyer Working Capital Reserve Account to pay a Participant's share of an invoice rendered to SPPA pursuant to the Box Canyon PPA and such use of funds reduces that Participant's contribution to the Buyer Working Capital Reserve Account to less than the Participant's Participant Percentage, SPPA shall deliver a notice to such Participant on the Business Day after such funds are used and the Participant shall, within 10 days of such notice from SPPA, restore its contribution to the Buyer Working Capital Reserve Account to its Participant Percentage. Such notice shall describe actions SPPA has taken with respect to the Participant's share of the Buyer Working Capital Reserve Account and Buyer Default Security.
- (c) If a Participant does not pay an invoice prior to the 25th of the Service Month, SPPA may suspend the Participant's rights to its Participant Entitlement to Product from Box Canyon. Following suspension of the Participant's rights, SPPA shall remarket the suspended Participant's allocated share, on an interim basis, to any other SPPA Participant that voluntarily assumes that share or any other eligible counterparty. If SPPA is unable to or otherwise does not remarket the share on a voluntary basis within thirty (30) days from the date of the defaulting Participant's suspension, SPPA shall reallocate the remaining portion of the suspended Participant's share pro rata (based upon the Participant Entitlements of Participants not in default), to all other Participants which are not in default. Notwithstanding the suspension, the Participant in Payment Default will

have the full financial obligation to pay for its Participant Entitlement except to the extent SPPA has remarketed the Entitlement, up to the amount SPPA has been paid for such remarketed Entitlement less SPPA's cost. During the term of such suspension, SPPA may withdraw funds from Participant's share of the Buyer Working Capital Reserve Account in order to pay any portion of Participant's allocated share of all costs associated with Box Canyon or the Box Canyon PPA in excess of the amount received for any re-marketed or re-allocated Product. Such suspension shall continue until the earlier of the date that (i) Participant shall have cured such Payment Default, or (ii) the Participant shall have voluntarily transferred its Participant Entitlement to non-defaulting Participant(s) or to a new Participant pursuant to Section 9.2 and such new Participant(s) have paid the pro rata share of the Buyer Working Capital Reserve Amount.

- (d) If a Participant has not cured the Payment Default after 60 days of notice of the Payment Default, SPPA shall terminate the Participant, remarket the Participant's share on an interim basis, and reallocate the Participant's share on a permanent basis pursuant to Article Twelve of this Agreement. Notwithstanding the termination, the Participant will have the full financial obligation to pay for its Participant Entitlement except to the extent SPPA has remarketed the allocation and been paid for such remarketed Entitlement, irrespective of the fact that the share has been remarketed on an interim or permanent basis. SPPA may withdraw funds from Participant's share of the Buyer Working Capital Reserve Account in order to pay Participant's allocated share of all costs associated with Box Canyon or Box Canyon PPA. SPPA shall promptly provide notice of any such termination to all Participants.

11.3 Remedies for other Defaults. If a Party fails to perform or breaches any of its material obligations under this Agreement, then the non-defaulting Party shall be entitled to exercise all remedies available to it at law or in equity and any other applicable provision of this Agreement, except as otherwise limited by this Agreement. The Parties acknowledge and agree that monetary damages may not be an adequate remedy at law for the failure of a Party to perform certain material obligations under this Agreement, and under such circumstances, the non-defaulting Party shall have the right to specific performance by the defaulting Party of such obligations under this Agreement.

11.4 No Termination by Participant. In response to any Event of Default by SPPA, Participant shall not have the right to terminate this Agreement unless such termination is undertaken pursuant to Article Nine of this Agreement, including following the procedures in Section 9.2.

ARTICLE TWELVE: TRANSFER OF PARTICIPANT ENTITLEMENT FOLLOWING TERMINATION FOR DEFAULT

12.1 In the event of a default by any Participant and termination of such Participant's Participant Entitlement pursuant to Section 11.2(d) of this Agreement, SPPA shall undertake or cause to be undertaken the following actions in the order indicated:

- (a) SPPA shall offer to allow each Participant that is not in default to acquire a pro-rata portion of the Participant Entitlement of the defaulting Participant.
- (b) Any part of the Participant Entitlement of the defaulting Participant that shall be declined by any non-defaulting Participant shall be reoffered pro rata to the non-defaulting Participants that have accepted in full the first such offer.
- (c) Such reoffering shall be repeated until the Participant Entitlement of the defaulting Participant seeking to terminate shall have been reallocated in full or until all non-defaulting Participants shall have declined to take any additional portion of such defaulting Participant's Participant Entitlement.

12.2 If the full amount of the defaulting Participant's Entitlement is not voluntarily accepted by other Participants, SPPA will attempt to market the remainder to entities that are not Participants, under the following conditions:

- (a) Such entities must meet all eligibility requirements to become Participants; and
- (b) Such entities must become Participants by executing the form of Participation Agreement attached as Exhibit A; and
- (c) In no event shall any transfer be permitted if it would jeopardize the tax-exempt status of any bonds issued by SPPA.

12.3 SPPA shall transfer pro rata (based upon then-current Participant Entitlement), to all other Participants which are not in default, the remaining part of a defaulting Participant's Participant Entitlement if less than all of such Participant Entitlement has not been voluntarily accepted, pursuant to Section 12.1 above, by the non-defaulting Participants, or marketed to new Participants pursuant to Section 12.2 above, in all cases, within one hundred twenty (120) days after the date the Payment Default occurred. Upon the transfer of the full amount of the defaulting Participant's Participant Entitlement to other Participants (and such Participants' acceptance of such transfer), SPPA shall be relieved of any further obligation to attempt to dispose of such defaulting Participant's Participant Entitlement for the remaining months of SPPA's continued receipt of the Product.

12.4 Any part of the Participant Entitlement of a defaulting Participant voluntarily or involuntarily transferred pursuant to this Article Twelve to a non-defaulting Participant shall become a part of, and shall be added to, the Participant Entitlement of

each transferee Participant, and the transferee Participant shall be obligated to pay for its Participant Entitlement increased as aforesaid, (including contribution to the Buyer Working Capital Reserve Account and the posting of any security that is required of any transferee Participants, in each case, on or before the date that is concurrent with the transfer; provided that in the case of posting security, such date may be extended to such date that is required in order for SPPA to meet its obligations to post security pursuant to Section 7.4.3 of the Box Canyon PPA), as if the Participant Entitlement of the transferee Participant, increased as aforesaid, had been stated originally as the Participant Entitlement of the transferee Participant in the SPPA Power Purchase Project Agreement.

12.5 A defaulting Participant shall remain liable for all payments required to be made by it under its SPPA Power Purchase Project Agreement, except that the obligation of the defaulting Participant to pay SPPA shall be reduced to the extent that payments shall be received by SPPA for that part of the defaulting Participant's Participant Entitlement which is transferred to any existing or new Participant under Article 12 of this Agreement.

12.6 As provided in Article 4 of this Agreement, SPPA may use a defaulting Participant's share of the Working Capital Reserve Amount to cover the obligations of SPPA on behalf of the Defaulting Participant under the Box Canyon PPA. If any portion of defaulting Participant's share of the Working Capital Reserve Amount remains after satisfaction of such obligations, SPPA may withdraw such portion from the Working Capital Reserve Account only after all Participants with new or stepped-up obligations under this Article 12 have fully funded their new shares of the Working Capital Reserve Amount. SPPA may deduct from defaulting Participant's remaining portion of Working Capital any expenses incurred by SPPA on behalf of the Project Participants to manage the default by the defaulting Participant. If any amount of defaulting Participant's portion of Working Capital remains after all such expenses are satisfied, it shall be returned to defaulting Participant.

12.7 If a defaulting Participant's share of the Working Capital Reserve Amount is insufficient to cover the amounts SPPA owes on its behalf pursuant to the Box Canyon PPA, SPPA will allocate the costs among the Participants in Schedule 4.1 in proportion to their revised Participant Entitlements, such costs to be allocated concurrently with such voluntary or involuntary transfer.

ARTICLE THIRTEEN: UNCONTROLLABLE FORCE

13.1 To the extent a Force Majeure (as defined in the Box Canyon PPA) exists and relieves, delays or otherwise excuses either SPPA's or Seller's obligations under the Box Canyon PPA, the obligation of each Participant hereunder shall be relieved, delayed or excused during the continuance of such Force Majeure; provided that such relief, delay or excuse shall be limited to the extent and only for such obligations that are relieved, delayed or otherwise excused.

13.2 Under no circumstances shall the provisions of Section 13.1 provide relief, allow delay or otherwise excuse the obligations of a Participant to make payments required

by this Agreement or to increase its Participant Entitlement as required by Sections 12.2 and 12.3 of this Agreement.

ARTICLE FOURTEEN: REPRESENTATIONS AND WARRANTIES

14.1 SPPA's Representations. SPPA hereby makes the following representations, warranties and covenants to Participant as of the Effective Date and through the end of the Term:

- (a) SPPA is a political subdivision of the State of Arizona duly organized, validly existing and in good standing under the laws of the State, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- (b) The execution, delivery and performance by SPPA of this Agreement have been duly authorized by all necessary action.
- (c) This Agreement constitutes the legal, valid and binding obligation of SPPA, enforceable in accordance with its terms.
- (d) There is no pending, or to the knowledge of SPPA, threatened action or proceeding affecting SPPA before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, SPPA's sole continuing covenant with respect to this Section 14.1(d) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.
- (e) SPPA acknowledges and agrees that the activities contemplated by the provisions of this Agreement are commercial in nature and that it is not entitled to any right of immunity on the grounds of sovereignty. To the fullest extent allowed by law, SPPA hereby knowingly, and expressly waives all existing and future rights of sovereign immunity, and all other similar immunities, as a defense relative to this Agreement. This waiver is irrevocable and applies to the jurisdiction of any court, legal process, suit, judgment, attachment, set-off or any other legal process with regards to the enforcement of this Agreement or other determination of the Parties' rights under this Agreement.

14.2 Participant's Representations. Participant hereby makes the following representations, warranties and covenants to SPPA as of the Effective Date and through the end of the Term:

- (a) Participant is a city, town, county, special taxing district established pursuant to Title 48, Chapters 11, 12, 17, 18, 19 or 22 of Arizona Revised

Statutes, or any Indian tribe authorized to form a separate legal entity pursuant to A.R.S. §§ 11-952 and 11-952.02, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

- (b) The execution, delivery and performance by Participant of this Agreement have been duly authorized by all necessary action.
- (c) This Agreement constitutes the legal, valid and binding obligation of Participant, enforceable in accordance with its terms.
- (d) There is no pending, or to the knowledge of Participant, threatened action or proceeding affecting Participant before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, Participant's sole continuing covenant with respect to this Section 14.2(e) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.
- (e) Participant is, and shall remain throughout the term of this Agreement, a Pool Participant under the Pool Agreement.
- (f) Participant will establish, maintain and collect such rates, fees and charges so as to provide revenues at least sufficient to enable Participant to make all payments required to be made by it under this Agreement and any other agreements with respect to its electric utility.
- (g) The obligations of Participant to make payments under this Agreement shall be limited to the obligation to make payments from revenues of its electric utility system and available electric utility system reserves. All payments made by Participant pursuant to this Agreement shall constitute operation and maintenance expenses of its electric utility system. The Participant shall not be obligated to levy any taxes for the purpose of paying any amount due under this Agreement. The Participant shall not issue any evidence of indebtedness with a lien on electric system revenues that is prior to the payment of operating and maintenance expenses.
- (h) The Participant covenants to maintain its electric system in good repair in accordance with Prudent Electrical Practices, to cooperate with SPPA, and to keep accurate records and accounts.
- (i) The Participant shall not sell, lease or otherwise dispose of all or substantially all of its electric system, nor shall the Participant assign all or any part of its Participant Entitlement or any or all of its interests under this Agreement, except upon the approval of SPPA, such approval not to be unreasonably withheld or delayed.

- (j) Participant's electric utility system shall not be made a part of an integrated utility system subsequent to the Effective Date of this Agreement if, in the opinion of a consulting engineer of national reputation selected by SPPA, the revenues of any other utility system(s) to be so integrated would not reasonably be expected to equal or exceed the costs and expenses thereof.
- (k) Participant acknowledges and agrees that the activities contemplated by the provisions of this Agreement are commercial in nature and that it is not entitled to any right of immunity on the grounds of sovereignty. To the fullest extent allowed by law, Participant, unless it is a Tribal Participant that has provided a waiver described in Section 10.4, hereby knowingly, and expressly waives all existing and future rights of sovereign immunity, and all other similar immunities, as a defense relative to this Agreement. This waiver is irrevocable and applies to the jurisdiction of any court, legal process, suit, judgment, attachment, set-off or any other legal process with regards to the enforcement of this Agreement or other determination of the Parties' rights under this Agreement.

ARTICLE FIFTEEN: CREDITWORTHINESS

15.1 The SPPA Pool Management Committee may increase the amount of security in the Buyer Working Capital Reserve Account described in Section 4.7 that may be required of individual Participants or for all Participants as credit concerns or Project needs may require.

15.2 Participant shall provide such financial information and operating data as SPPA is required to obtain from Participant under the Box Canyon PPA or any rules or regulations applicable to SPPA related to Box Canyon.

ARTICLE SIXTEEN: SPECIAL MEMBER PROVISIONS

16.1 RUS Approval. The effectiveness of this Agreement as to those Participants that are regulated by RUS (set forth on Exhibit D) (each, an "RUS Participant") is conditioned on approval by RUS of this Agreement as it applies to each such RUS Participant. No later than thirty (30) days after the Effective Date, each RUS Participant shall make an appropriate submission to RUS seeking the approval of this Agreement with respect to such RUS Participant. Each RUS Participant shall use reasonable best efforts to secure RUS approval. SPPA and each RUS Participant shall (at its own expense) cooperate with and assist one another in securing the necessary approval from RUS; provided that to the extent any information to be provided by a RUS Participant to RUS is deemed confidential information by Seller, Seller's obligation to provide such information may be conditioned upon RUS agreeing to maintain its confidentiality pursuant to a protective order or a confidentiality agreement.

16.2 RUS Denial or Modification; Reallocation. In the event RUS should deny approval of this Agreement with respect to a RUS Participant or require as a condition of approval of the Agreement any modifications that cannot be accommodated by an

amendment agreeable to all Participants that is executed on or before the date that is 30 days after the RUS provides such modifications, then the RUS Participant's Participant Entitlement shall be reduced by the amount subscribed by the terminated RUS Participant at the time of such termination, and the Participant Entitlements of the remaining Participants shall be adjusted upwards pro rata to account for the terminating RUS Participant's prior Participant Entitlement (unless Participants agree on a different allocation) in a revised Schedule 4.1; provided that the entire amount purchased under the Box Canyon PPA is allocated and such allocation shall occur no later than the date that is the earlier to occur of (a) the date that is 30 days after such termination, and (b) the date that is 30 days prior to the expected Commercial Operation Date.

16.3 Cancellation Rights Under A.R.S. § 38-511. The Parties hereby acknowledge that the Participants listed on Exhibit E are political subdivisions that, pursuant to A.R.S. § 38-511, "may, within three years after its execution, cancel any contract, without penalty or further obligation, . . . if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of [that political subdivision] is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract." The cancellation "shall be effective when written notice from . . . the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time."

16.4 Reallocation Upon Cancellation. Each of the Participants listed on Exhibit E agrees that if it elects to exercise its cancellation right pursuant to A.R.S. § 38-511 (based upon facts that were not known to it at the time of execution of this Agreement, or based upon facts known prior to execution if, contrary to the parties' intentions, such facts would constitute a valid basis for exercising the cancellation right), it shall provide at least twelve (12) months' notice of such cancellation. If a Participant listed on Exhibit E exercises its cancellation rights as set forth in this Section 16.4, then the Participant Entitlement shall be reduced by the amount subscribed by the terminated Participant at the time of such termination, and the Participant Entitlements of the remaining Participants shall be adjusted upwards pro rata to account for the terminating Participant's prior Participant Entitlement (unless Participants agree to another allocation) in a revised Schedule 4.1, and such reallocation shall occur (a) on the effective date of termination, if the effective date of termination is after the date that is 30 days before the expected Commercial Operation Date, or (b) the earlier to occur of (i) the date that is 30 days after such termination, and (ii) the date that is 30 days prior to the expected Commercial Operation Date, if the effective date of termination is before the date that is 30 days before the expected Commercial Operation Date; provided that the entire amount purchased under the Box Canyon PPA is allocated.

16.5 Buyer Working Capital Reserve and Security. Upon any termination under this Article 16, the terminating Participant (a) shall not be entitled to receive any amount of its share of Working Capital Reserve Amount, and (b) shall not be entitled to a return of any of its posted security, in each such case, until the Participants taking a reallocation of such terminating Participant's Participant Entitlement have fully funded their respective

share of the Working Capital Reserve Amount and provided any posted security that was required of the terminating Participant. Each Participant acknowledges and agrees that SPPA may use amounts of such terminating Participant in the Buyer Working Capital Reserve as needed to meet Participant's share of SPPA's obligations to Box Canyon under the Box Canyon PPA.

16.6 Consent and Waiver. It is further acknowledged that certain Participants have engaged legal counsel and/or technical consultants to represent them in connection with the development of this Agreement and activities related thereto, which legal counsel or technical consultants simultaneously represented one or more other Participants and/or SPPA in connection with the same activities, and such joint representation was consented to by the Participants and is a commonly used and efficient means of obtaining expert assistance with respect to matters of common interest to certain of the Participants. In addition, the Participants acknowledge and understand that the designated representatives and alternates of the Participants on the SPPA board of directors are also elected officials of the Participants, or employees of or consultants to the Participants ("Participant fiduciaries") with responsibilities to both SPPA and the respective Participants. It is agreed and understood by all of the Parties that neither such representation of SPPA and any Participant in connection with this Agreement, nor the dual role of the Participant fiduciaries, is intended to be and does not constitute a basis for invoking cancellation pursuant to A.R.S. § 38-511.

ARTICLE SEVENTEEN: MISCELLANEOUS

17.1 Applicable Law. The rights and obligations of the Parties under this Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Arizona, without regard to conflicts of law doctrines.

17.2 Notices. Unless otherwise expressly provided for in this Agreement, all communications and notices to a Party in connection with this Agreement shall be in writing, and any such notice shall become effective (a) upon personal delivery thereof, including by overnight mail or next Business Day or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of email, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided by either of the methods set forth in clause (a) or (b) above. All notices provided by the means described in clauses (a), (b), or (c) above shall be addressed to SPPA and to Participants at the addresses provided in Exhibit C, or to such other address as any Party may designate by written notice to the other Parties. SPPA will update Exhibit C to reflect changes, without the necessity of amending this Agreement.

17.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

17.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law; but if any

provision of this Agreement shall be prohibited by or deemed invalid under any applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

17.5 Parties Bound. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

17.6 Third-Party Beneficiaries. Seller is an express third party beneficiary of the following obligations and covenants in the Member Resale Agreement (Sections 4.5 (Participant's Entitlement), 4.6 (Cost Responsibility), 4.7 (Buyer Working Capital Reserve Account), 4.9 (Payment Obligation), 4.10 (Funding of Buyer Default Security), 5.3 (Pass-Through of Refunds), Section 9.2 (Voluntary Transfer of Participant Entitlement to Other Participant(s)), Section 9.3 (Timing of Transfer of Funds), Article Ten (Dispute Resolution) to the extent the dispute relates to a provision as to which Seller is a Third Party Beneficiary, Article Eleven (Defaults and Remedies), Article Twelve (Transfer of Participant Entitlement Following Termination for Default), and Section 15.2 (Creditworthiness) and Article Seventeen (Miscellaneous) and, accordingly, shall be entitled to enforce such covenants on behalf of Buyer, if Buyer fails to do so. Except as expressly provided in this Section 16.5, none of the provisions of this Agreement are intended for the benefit of any Person other than the Parties, their respective successors and permitted assigns.

17.7 Entire Agreement. This Agreement states the rights of the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, oral or written, with respect thereto.

17.8 Headings and Table of Contents. Article and Section headings and the table of contents used in this Agreement (including headings used in any schedules and/or exhibits attached hereto) are for convenience of reference only and shall not affect the construction of this Agreement.

17.9 Schedules and Exhibits. The schedules and exhibits hereto, together with all attachments referenced therein, are incorporated herein by reference and made a part hereof.

17.10 Amendments and Waivers.

- (a) Except as expressly provided with respect to updates of Schedule 4.1, Exhibits A, B, C, D and E, this Agreement may not be amended, supplemented or otherwise modified, other than pursuant to an instrument or instruments in writing executed by the Parties, and if required by the Box Canyon PPA, the consent of Seller.
- (b) No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, less than any applicable statutory period of

limitations, in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. Failure of either Party to enforce any provisions hereof shall not be construed to waive such provision, or to affect the validity of this Agreement or any part thereof, or the right of the Party thereafter to enforce each and every provision thereof.

17.11 Survival. Except for Articles Five (to the extent applicable to obligations arising prior to termination), Eight, Ten, and Eleven, which shall survive termination of this Agreement, and except as otherwise expressly provided in this Agreement, the representations, warranties and obligations of each Party contained in this Agreement shall not survive the termination of this Agreement.

17.12 Further Assurances. Each Party shall promptly and duly execute and deliver such further documents and assurances for and take such further actions reasonably requested by the other Party, all as may be reasonably necessary to carry out the purposes of this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed and delivered under seal by its duly authorized representative as of the date set forth below.

SOUTHWEST PUBLIC POWER AGENCY

By: _____

Name:

Title: General Manager

Dated: _____

PARTICIPANT OF [_____]

By: _____

Name:

Title:

Dated: _____

[SEAL]

Attest: _____

Name:

Title: Participant Clerk

Dated: _____

SCHEDULE 4.1

SPPA Project Contract 2021-2

Box Canyon Resale Agreement Between SPPA And Participants
("Box Canyon Resale Agreement")

Number	Participant	Participant Entitlement (Megawatts)	Participant Percentage
1	Aguila Irrigation District	3.9	1.30%
2	Ak-Chin Energy Services ⁽¹⁾	6.8	2.27%
3	Buckeye Water Conservation & Drainage District	3.9	1.30%
4	Electrical District No. 2 of Pinal County	34.2	11.40%
5	Electrical District No. 3 of Pinal County	63.4	21.13%
6	Electrical District No. 4 of Pinal County	26.4	8.80%
7	Electrical District No. 6 of Pinal County	6.8	2.27%
8	Electrical District No. 7 of Maricopa County	5.9	1.97%
9	Electrical District No. 8 of Maricopa County	21.5	7.17%
10	Gila River Indian Community Utility ⁽¹⁾	19.6	6.53%
11	Harquahala Valley Power District	9.8	3.27%
12	McMullen Valley Water Conservation & Drainage District	9.8	3.27%
13	Maricopa County Municipal Water	24.4	8.13%
14	Ocotillo Water Conservation District	1.9	0.63%
15	Roosevelt Irrigation District	5.9	1.97%
16	Safford (City of)	9.8	3.27%
17	Thatcher (Town of)	11.7	3.90%
18	Tonopah Irrigation District	5.9	1.97%
19	Tohono O'odham Utility Authority ⁽¹⁾	16.6	5.53%
20	Town of Wickenburg	5.9	1.97%
21	Williams (City of)	5.9	1.97%
	Total	300.0	100%

⁽¹⁾ Tribal Participant

EXHIBIT A
FORM OF PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT FOR THE SOUTHWEST PUBLIC POWER AGENCY, INC., PROJECT AGREEMENT FOR THE POWER PURCHASE AGREEMENT PROJECT (the "Participation Agreement") is entered into as of the ____ day of _____, 202__, ("Participant Effective Date") by and between _____ (the "Participant") and the Southwest Public Power Agency, Inc. ("SPPA").

The Participant [is] [is not] a member of SPPA and is or will be a participant of the Pool Agreement and wishes to participate in the Power Purchase Agreement Project. Accordingly, by the execution and delivery of this Participation Agreement, the Participant acknowledges and agrees to become a "Participant" under the SPPA Project Contract No. 2021-2 (the "Project Agreement"), dated as of _____, 202__, by and among SPPA and the other Participants and under the Box Canyon Resale Agreement ("Box Canyon Resale Agreement"), dated as of _____, 202__, by and among SPPA and the "Participants" that are or have become party thereto. SPPA and, if in existence, the Project Management Committee have approved the participation of the Participant (and authorized SPPA's execution of this Participation Agreement) pursuant to Article 7 of the Project Agreement. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Box Canyon Resale Agreement and the Project Agreement.

The Participant hereby acknowledges, agrees and confirms that, by its execution of this Participation Agreement, as of the date hereof, it shall (without limitation): (i) be deemed to be a signatory to the Project Agreement and the Box Canyon Resale Agreement; (ii) be deemed to have made the representations and warranties set forth in Article 18 of the Project Agreement to SPPA and each other Participant a party thereto [and Article Fourteen of the Box Canyon Resale Agreement to SPPA and each other Participant a party thereto] on and as of the Participation Effective Date; (iii) agree that the representations made with respect to the Project Agreement [and the Box Canyon Resale Agreement] shall be deemed to include this Participation Agreement, (iv) agree to be bound by the terms of the Project Agreement; (v) agree that each other Participant (under the Project Agreement), each Participant (under the Box Canyon Resale Agreement) and Seller is a third-party beneficiary of this Participation Agreement and the Box Canyon Resale Agreement; and (vi) have all of the rights, remedies, powers, privileges and obligations of a Participant under the Project Agreement and of a Participant under the Box Canyon Resale Agreement from and after the date of this Participation Agreement.

The Participant hereby specifies that its address for notices under Exhibit F of the Project Agreement and Exhibit C of the Box Canyon Resale Agreement shall be as follows:

[Participant]
[Street]
[City, State, Zip Code]
Attention:

The following items are attached hereto:

1. An amended Exhibit A of the Project Agreement adding the Participant and an

amended Schedule 4.1 of the Box Canyon Resale Agreement reflecting the adjusted Participant Entitlement and Participant Percentages, to be effective as of the Participant Effective Date.

2. If the Participant is a tribal entity: A copy of the Participant's waiver of sovereign immunity, which shall be deemed to be included in Exhibit B of the Box Canyon Resale Agreement and Appendix C-1 of the Project Agreement.

IN WITNESS WHEREOF, the undersigned have caused their duly authorized officers to sign this Participation Agreement on the date first set forth above.

[PARTICIPANT]

By _____
Name: _____
Title: _____

Southwest Public Power Agency, Inc.

By _____
Name: _____
Title: _____

EXHIBIT B
COPIES OF TRIBAL RESOLUTIONS AND WAIVERS (SECTION 10.4)

EXHIBIT C
Notices (Section 16.2)
ADDRESSES FOR NOTICES

TO SPPA:

Southwest Public Power Agency, Inc.

160 North Pasadena

Suite 101

Mesa, AZ 08201

Attn: Dennis L. Delaney, dld@krsaline.com & Jennifer M Torpey, jmt@krsaline.com
with a copy to Sheryl Sweeney, ssweeney@clarkhill.com

TO PARTICIPANTS:

Aguila Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager	Ak-Chin Energy Services 42507 W Peters & Nall Rd Maricopa, AZ 85138 Attention: ACES Board Chairman <i>With a copy to:</i> Ed Gerak, Power Manager Utility Strategies Consulting Group 4645 S. Lakeshore Dr, Suite 16 Tempe, AZ 85282
Buckeye Water Conservation and Drainage District P.O. Box 1726 Buckeye, AZ 85326-0160 Attn: General Manager	City of Safford P.O. Box 272 Safford, AZ 85548 Attn: City Manager
City of Williams 113 South 1 st Street Williams, AZ 86046 Attn: City Manager	Electrical District Number Two of Pinal County Mailing Address: P.O. Box 548 Coolidge, AZ 85128 Physical Address: 5575 N. Eleven Mile Corner Rd. Casa Grande, AZ 85194 Fax: 520-723-5252 Attn: General Manager

Electrical District Number Three of Pinal County 41630 W. Louis Johnson Dr. Maricopa, AZ 85138 Attn: General Manager	Electrical District Number Four of Pinal County P. O. Box 605 Eloy, AZ 85131 Attn: District Manager
[reserved]	Electrical District Number Six 34630 N. Schnepf Rd. San Tan Valley, AZ 85140 Attn: Board President
Electrical District Number Seven of Maricopa County 14629 West Peoria Ave Waddell, AZ 85355 Attn: District Manager	Electrical District Number Eight of Maricopa County 38401 W I-8; Bldg 175 Gila Bend, AZ 85337 Attn: General Manager
Gila River Indian Community Utility Authority 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attn: General Manager <i>With copies to:</i> 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attention: Finance Director The Rothstein Law Firm 80 East Rio Salado Parkway, Suite 710 Tempe, Arizona 85281 Attn: Denten Robinson	Harquahala Valley Power District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager
Maricopa Water District P.O. Box 900 Waddell, AZ 85355-0900 Attn: General Manager	McMullen Valley Water Conservation & Drainage District P.O. Box 70 Salome, AZ 85348 Attn: General Manager
[reserved]	Ocotillo Water Conservation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager

Roosevelt Irrigation District 103 West Baseline Road Buckeye, AZ 85326 Attn: Superintendent	Tohono O'odham Utility Authority P.O. Box 816 Sells, AZ 85634 Attn: General Manager
Tonopah Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Administrator	Town of Thatcher P. O. Box 670 Thatcher, AZ 85552 Attn: Town Manager
Town of Wickenburg 155 N Tegner Street Suite A Wickenburg, AZ 85390 Attn: Town Manager	

EXHIBIT D
RUS PARTICIPANTS

1. Tohono O'odham Utility Authority

EXHIBIT E
ARIZONA MUNICIPAL PARTICIPANTS

1. City of Safford
2. City of Williams
3. Town of Thatcher
4. Town of Wickenburg

RESOLUTION NO. 1421

**RESOLUTION OF CITY COUNCIL
OF THE CITY OF WILLIAMS
APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY
OF THE FOURTH AMENDMENT TO THE
ADMINISTRATION AND SCHEDULING AGREEMENT
AND THE SECOND AMENDMENT TO
THE AMENDED AND RESTATED
POWER PURCHASE AGREEMENT**

WHEREAS, The City of Williams (“Williams”), Southwest Public Power Agency, Inc. (“SPPA”), and certain other SPPA members are parties to the Amended and Restated Administration and Scheduling Agreement dated as of July 31, 2014 (the “ASA”);

WHEREAS, the parties to the ASA wish to amend the ASA to add Tohono O’odham Utility Authority and the Town of Wickenburg, Arizona, as parties to the ASA and make certain other modifications to the ASA;

WHEREAS, Williams and others are parties to the Power Purchase Agreement (“PPA”) with Mesquite Power, LLC, effective as of September 15, 2017, as it has been and may be amended from time to time; and

WHEREAS, the parties to the PPA wish to amend the PPA to add Tohono O’odham Utility Authority and the Town of Wickenburg, Arizona, as parties to the PPA and make certain other modifications to the PPA, including increasing the quantity of capacity and energy to be provided thereunder.

NOW, THEREFORE, BE IT RESOLVED by the Williams City Council that:

1. The Fourth Amendment to the Administration and Scheduling Agreement (the “Fourth Amendment”), as presented to the Williams City Council, a copy of which is attached hereto as **Exhibit A**, is hereby approved.

2. The Second Amendment to the Amended and Restated Power Purchase Agreement by and between Mesquite Power, LLC, and others (the "Second Amendment"), as presented to the Williams City Council, a copy of which is attached hereto as **Exhibit B**, is hereby approved.

3. The Mayor and any other officer of the Williams City Council are authorized to execute the Fourth Amendment and the Second Amendment with only such changes as approved by the signatory, in consultation with SPPA's legal counsel and SPPA's administrative agent. From and after the execution and delivery of the Fourth Amendment and the Second Amendment, the officers of SPPA and SPPA's administrative agent are hereby authorized and directed to perform all acts, execute and deliver all documents and to take such other steps necessary or convenient to implement and perform the provisions of the Fourth Amendment and the Second Amendment.

Adopted this ____ day of _____, 20__.

Mayor John W. Moore
Attest:

City Clerk Pamela Galvan

EXHIBIT A

[Fourth Amendment to ASA]

EXHIBIT B

[Second Amendment to PPA]

**Fourth Amendment
to the
Administration and Scheduling Agreement
_____, 2021**

This Fourth Amendment to the original Administration and Scheduling Agreement dated as of June 30, 2011, by which the Parties agree to further amend the Amended and Restated Administration and Scheduling Agreement, dated as of July 31, 2014 (the “Amended and Restated A&SA”), is entered into by and among AGUILA IRRIGATION DISTRICT, AK-CHIN ENERGY SERVICES, BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT, CITY OF SAFFORD, CITY OF WILLIAMS, ELECTRICAL DISTRICT NUMBER TWO OF PINAL COUNTY, ELECTRICAL DISTRICT NUMBER THREE OF PINAL COUNTY, ELECTRICAL DISTRICT NUMBER FOUR OF PINAL COUNTY, ELECTRICAL DISTRICT NUMBER SIX OF PINAL COUNTY, ELECTRICAL DISTRICT NUMBER SEVEN OF MARICOPA COUNTY, ELECTRICAL DISTRICT NUMBER EIGHT OF MARICOPA COUNTY, GILA RIVER INDIAN COMMUNITY UTILITY AUTHORITY, HARQUAHALA VALLEY POWER DISTRICT, MARICOPA COUNTY MUNICIPAL WATER CONSERVATION DISTRICT NUMBER ONE, MCMULLEN VALLEY WATER CONSERVATION & DRAINAGE DISTRICT, NAVAJO TRIBAL UTILITY AUTHORITY, OCOTILLO WATER CONSERVATION DISTRICT, ROOSEVELT IRRIGATION DISTRICT, TOHONO O’ODHAM UTILITH AUTHORITY, TONOPAH IRRIGATION DISTRICT, TOWN OF THATCHER AND TOWN OF WICKENBURG, each of which shall be referred to herein as a “Participant,” and SOUTHWEST PUBLIC POWER AGENCY, INC., as the Agent. The Participants and the Agent may be referred to collectively as the “Parties.”

RECITALS

WHEREAS, each of the Participants listed above except for Tohono O’odham Utility Authority and Town of Wickenburg is a Party to the September 15, 2017 Amended and Restated Power Purchase Agreement (“PPA”), as amended, which provides for Seller to sell and the Buyers to purchase certain quantities of capacity and firm energy;

WHEREAS, SPPA and the Participants listed above except for Tohono O’odham Utility Authority and Town of Wickenburg are Parties to the Amended and Restated A&SA of July 31, 2014, as it has been amended from time to time;

WHEREAS, Buyers and Seller have executed a further amendment to the PPA increasing the quantity of capacity and energy to be provided thereunder starting in 2024 and adding Tohono O’odham Utility Authority and Town of Wickenburg as PPA Buyers;

WHEREAS, the Participants and SPPA wish to amend this Agreement to add Tohono O’odham Utility Authority and Town of Wickenburg as Parties and Participants and to make certain other corresponding changes to the appendices as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Participants agree as follows:

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the PPA or the Amended and Restated A&SA, as applicable.

1. Amendments to Amended and Restated A&SA

- a) The Tohono O’odham Utility Authority and the Town of Wickenburg are each added as Participants and Parties to the A&SA, as currently amended. By signing this Amendment, the Tohono O’odham Utility Authority and the Town of Wickenburg each accept the rights and responsibilities of a Participant as laid out under A&SA, for the period on and after the Amendment Effective Date. In accordance with Section 4.2 of the PPA, a revised Exhibit A is attached hereto.
- b) The execution of this Amendment by each Participant and SPPA expressly confirms such party’s consent to the addition of the Tohono O’odham Utility Authority and the Town of Wickenburg as Participants in the A&SA.
- c) The Amendment Effective Date is May -1, 2024.
- d) Appendix A to the Amended and Restated A&SA shall be replaced with Revision 3 to Appendix A, effective as of May 1, 2024, attached to this Fourth Amendment.
- e) Appendix B-1 to the Amended and Restated A&SA shall be replaced with Revision 2 to Appendix B-1, effective as of May 1, 2024, attached to this Fourth Amendment.
- f) Appendix C to the Amended and Restated A&SA shall be replaced with Revision 3 to Appendix C, effective as of May 1, 2024.
- g) Appendix D to the Amended and Restated A&SA shall be replaced with Revision 1 to Appendix D, Effective as of May 1, 2024.
- h) Appendix D-1 shall be amended by attaching a copy of the resolution of the Tohono O’odham Utility Authority’s partial waiver of sovereign immunity.

2. No other change, modification or amendment to A&SA.

Except as specified herein, all of the remaining terms, provisions and conditions of the Amended and Restated A&SA shall remain unchanged, in full force and effect and fully binding on the Participants.

3. Execution.

This Fourth Amendment may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any facsimile copies hereof or signature hereon shall, for all purposes, be deemed originals.

AGUILA IRRIGATION DISTRICT

By: _____
Name: _____
Title: _____
Date: _____

AK-CHIN ENERGY SERVICES

By: _____
Name: _____
Title: _____
Date: _____

BUCKEYE WATER CONSERVATION & DRAINAGE DISTRICT

By: _____
Name: _____
Title: _____
Date: _____

CITY OF SAFFORD

By: _____
Name: _____
Title: _____
Date: _____

CITY OF WILLIAMS

By: _____
Name: _____
Title: _____
Date: _____

ELECTRICAL DISTRICT NO. 2 OF PINAL COUNTY

By: _____
Name: _____
Title: _____
Date: _____

ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY

By: _____
Name: _____
Title: _____
Date: _____

ELECTRICAL DISTRICT NO. 4 OF PINAL COUNTY

By: _____
Name: _____
Title: _____
Date: _____

ELECTRICAL DISTRICT NO. 6 OF PINAL COUNTY

By: _____
Name: _____
Title: _____
Date: _____

ELECTRICAL DISTRICT NO. 7 OF MARICOPA COUNTY

By: _____
Name: _____
Title: _____
Date: _____

ELECTRICAL DISTRICT NO. 8 OF MARICOPA COUNTY

By: _____
Name: _____
Title: _____
Date: _____

GILA RIVER INDIAN COMMUNITY UTILITY AUTHORITY

By: _____
Name: _____
Title: _____
Date: _____

HARQUAHALA VALLEY POWER DISTRICT

By: _____
Name: _____
Title: _____
Date: _____

MARICOPA COUNTY MUNICIPAL WATER CONSERVATION DISTRICT NO. 1

By: _____
Name: _____
Title: _____
Date: _____

MCMULLEN VALLEY WATER CONSERVATION & DRAINAGE DISTRICT

By: _____
Name: _____
Title: _____
Date: _____

NAVAJO TRIBAL UTILITY AUTHORITY

By: _____
Name: _____
Title: _____
Date: _____

OCOTILLO WATER CONSERVATION DISTRICT

By: _____
Name: _____
Title: _____
Date: _____

ROOSEVELT IRRIGATION DISTRICT

By: _____
Name: _____
Title: _____
Date: _____

TOHONO O'ODHAM UTILITY AUTHORITY

By: _____
Name: _____
Title: _____
Date: _____

TONOPAH IRRIGATION DISTRICT

By: _____
Name: _____
Title: _____
Date: _____

TOWN OF THATCHER

By: _____
Name: _____
Title: _____
Date: _____

TOWN OF WICKENBURG

By: _____
Name: _____
Title: _____
Date: _____

BUYER'S CAPACITY PRO RATA SHARES

	Capacity Increase Date May 2021		On and after Second Capacity Increase Date May 2024		
	Aggregate Subscribed Capacity (Initial Capacity plus Incremental Capacity (MW))	Capacity Pro Rata Share – Aggregate (Initial Capacity plus Incremental Capacity)	Subscribed Amount of Incremental Capacity (MW)	Aggregate Subscribed Capacity (Initial Capacity plus Incremental Capacity (MW))	Capacity Pro Rata Share – Aggregate (Initial Capacity plus Incremental Capacity)
Aguila Irrigation District	7	0.01451	0	7	0.01201
Ak-Chin Energy Services	8	0.01656	0	8	0.01372
Buckeye Water Conservation &	4	0.00828	0	4	0.00686
City of Safford	19	0.03934	0	19	0.03259
City of Williams	5	0.01035	0	5	0.00858
Electrical District No. 2 of Pinal County	35	0.07246	0	35	0.06003
Electrical District No. 3 of Pinal County	150	0.31056	60	210	0.36021
Electrical District No. 4 of Pinal County	40	0.08282	0	40	0.06861
Electrical District No. 6 of Pinal County	4	0.00828	0	4	0.00686
Electrical District No. 7 of Maricopa County	6	0.01242	0	6	0.01029
Electrical District No. 8 of Maricopa County	46	0.09524	6	52	0.08919
Gila River Indian Community Utility	60	0.12422	5	65	0.11149
Harquahala Valley Power District	16	0.03313	0	16	0.02744
Maricopa County Municipal Water	5	0.01035	0	5	0.00858
McMullen Valley Water Conservation & Drainage District	16	0.03313	3	19	0.03259
Navajo Tribal Utility Authority	35	0.07246	15	50	0.08576
Ocotillo Water Conservation District	1	0.00207	0	1	0.00172
Roosevelt Irrigation District	10	0.02070	0	10	0.01715
Tohono O'odham Utility Authority (new Buyer)			6	6	0.01029
Tonopah Irrigation District	7	0.01449	2	9	0.01544
Town of Thatcher	9	0.01863	0	9	0.01544
Town of Wickenburg (new Buyer)			3	3	0.00515
Total	483	1.00000	100	583	1.00000

Notes: The amounts set forth in the table above shall be subject to adjustment from time to time in accordance with the Agreement.

Appendix B
Revision 3 Dated May 1, 2024

Funding Percentages
(for costs of Non_Routine Agenegy Functions)

BUYER	Funding Percentage (As of May 2021)	Funding Percentage (As of May 2024)
Aguila Irrigation District	2.22%	2.04%
Ak-Chin Energy Services	2.38%	2.17%
Buckeye Water Conservation &	1.76%	1.65%
City of Safford	4.09%	3.58%
City of Williams	1.91%	1.78%
Electrical District No. 2 of Pinal County	6.57%	5.64%
Electrical District No. 3 of Pinal County	24.43%	28.15%
Electrical District No. 4 of Pinal County	7.35%	6.28%
Electrical District No. 6 of Pinal County	1.76%	1.65%
Electrical District No. 7 of Maricopa County	2.07%	1.91%
Electrical District No. 8 of Maricopa County	8.28%	7.83%
Gila River Indian Community Utility	10.45%	9.50%
Harquahala Valley Power District	3.62%	3.19%
Maricopa County Municipal Water	1.91%	1.78%
McMullen Valley Water Conservation & Drainage District	3.62%	3.58%
Navajo Tribal Utility Authority	6.57%	7.57%
Ocotillo Water Conservation District	1.29%	1.27%
Roosevelt Irrigation District	2.69%	2.42%
Tohono O'odham Utility Authority (new Buyer)	1.14%	1.91%
Tonopah Irrigation District	2.22%	2.29%
Town of Thatcher	2.53%	2.29%
Town of Wickenburg (new Buyer)	1.14%	1.52%
Total	100.00%	100.00%

Appendix C
Revision 3 Dated May 1, 2024

ADDRESSES FOR NOTICES TO PARTIES

TO ADMINISTRATIVE AND SCHEDULING AGENT:

Dennis Delaney
SPPA Project Manager
K.R. Saline & Associates, PLC
160 North Pasadena, Suite 101
Mesa, AZ 85201-6764
480-610-8741
dld@krsaline.com

TO BUYERS:

Aguila Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager	Ak-Chin Energy Services 42507 W Peters & Nall Rd Maricopa, AZ 85138 Attn: ACES Board Chairman <i>With a copy to:</i> Ed Gerak, Power Manager Utility Strategies Consulting Group 20489 W. Walton Dr. Buckeye, AZ 85396
Buckeye Water Conservation and Drainage District P.O. Box 1726 Buckeye, AZ 85326-0160 Attn: General Manager	City of Safford P.O. Box 272 Safford, AZ 85548 Attn: City Manager
City of Williams 113 South 1 st Street Williams, AZ 86046 Attn: City Manager	Electrical District Number Two of Pinal County Mailing Address: P.O. Box 548 Coolidge, AZ 85128 Physical Address: 5575 N. Eleven Mile Corner Rd. Casa Grande, AZ 85194 Fax: 520-723-5252

	Attn: General Manager
Electrical District Number Three of Pinal County 41630 W. Louis Johnson Dr. Maricopa, AZ 85239 Attn: General Manager	Electrical District Number Four of Pinal County P. O. Box 605 Eloy, AZ 85131 Attn: District Manager
Electrical District Number Six 34630 N. Schnepf Rd. San Tan Valley, AZ 85140 Attn: Board President	Electrical District Number Seven of Maricopa County 14629 West Peoria Ave Waddell, AZ 85355 Attn: District Manager
Electrical District Number Eight of Maricopa County P.O. Box 99 Salome, AZ 85348 Attn: General Manager	Gila River Indian Community Utility Authority 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attn: General Manager <i>With copies to:</i> 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attention: Finance Director The Rothstein Law Firm 80 East Rio Salado Parkway, Suite 710 Tempe, Arizona 85281 Attn: Denten Robinson
Harquahala Valley Power District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager	Maricopa Water District P.O. Box 900 Waddell, AZ 85355-0900 Attn: General Manager
McMullen Valley Water Conservation & Drainage District P.O. Box 70 Salome, AZ 85348 Attn: General Manager	Navajo Tribal Utility Authority Route 12 North P. O. Box 170 Fort Defiance, AZ 86504-0170 Attn: General Manager
Ocotillo Water Conservation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager	Roosevelt Irrigation District 103 West Baseline Road Buckeye, AZ 85326 Attn: Superintendent

Tohono O'odham Utility Authority P.O. Box 816 Sells, AZ 85634 Attn: General Manager	Tonopah Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Administrator
Town of Thatcher P. O. Box 670 Thatcher, AZ 85552 Attn: Town Manager	Town of Wickenburg 155 N Tegner Street Suite A Wickenburg, AZ 85390 Attn: Town Manager

Appendix D
Revision 1 Dated May 1, 2024

BUYERS THAT ARE TRIBAL UTILITY BUYERS

Tribal Utility Buyer	Associated Tribe, Nation, and/or Community
Ak-Chin Energy Services	Ak-Chin Indian Community
Gila River Indian Community Utility Authority	Gila River Indian Community
Navajo Tribal Utility Authority	Navajo Nation
Tohono O’odham Utility Authority	Tohono O’odham Nation

**Second Amendment
to the
Amended and Restated Power Purchase Agreement
by and between
Mesquite Power, LLC and the Undersigned Buyers
[_____] 2022**

This Second Amendment to the Amended and Restated Power Purchase Agreement, dated September 15, 2017 (as amended, the “PPA”), by which the Parties agree to amend the PPA is entered into effective as of [_____] 2022 (“Amendment Effective Date”) by and among Mesquite Power, LLC (“Mesquite Power”), Aguila Irrigation District, Ak-Chin Energy Services, Buckeye Water Conservation and Drainage District, City of Safford, City of Williams, Electrical District No. 2 of Pinal County, Electrical District No. 3 of Pinal County, Electrical District No. 4 of Pinal County, Electrical District No. 6 of Pinal County, Electrical District No. 7 of Maricopa County, Electrical District No. 8 of Maricopa County, Gila River Indian Community Utility Authority, Harquahala Valley Power District, Maricopa County Municipal Water Conservation District No. 1, McMullen Valley Water Conservation and Drainage District, Navajo Tribal Utility Authority, Ocotillo Water Conservation District, Roosevelt Irrigation District, Tohono O’odham Utility Authority, Tonopah Irrigation District, Town of Thatcher, and Town of Wickenburg (each, a “Buyer” and collectively, the “Buyers”).

WHEREAS, Seller (Mesquite Power, LLC) and the Buyers listed above, except the Tohono O’odham Utility Authority and the Town of Wickenburg, are Parties to an amended and restated version of the Power Purchase Agreement (PPA) effective as of September 15, 2017, as it has been and may be amended from time to time; and

WHEREAS, the Tohono O’odham Utility Authority and the Town of Wickenburg desire to become Parties to the PPA as new Buyers; and

WHEREAS, Buyers and Seller wish to increase the quantity of capacity and energy to be provided thereunder starting in May 2024, and to adjust certain pricing terms of the PPA;

WHEREAS, the Buyers and Seller wish to amend the PPA as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Buyers and Seller agree as follows:

1) New Buyers.

- (a) The Tohono O’odham Utility Authority and the Town of Wickenburg are each added to the PPA as a “Buyer” for all purposes under the PPA. By signing this Amendment, the Tohono O’odham Utility Authority and the Town of Wickenburg each accept the rights and responsibilities of a Buyer as laid out under the PPA, for the period on and after the Amendment Effective Date.

- (b) The execution of this Amendment by each Buyer and Seller expressly confirms such party's consent the addition of the Tohono O'odham Utility Authority and the Town of Wickenburg as Buyers.
- (c) From and after the Amendment Effective Date, the defined terms "Buyer" and "Buyers" as used in the PPA shall mean each or all, as applicable, of the "Buyers" as defined in this Amendment.

2) Amendments.

- (a) The PPA is amended by adding the following new defined terms to the list of definitions in Section 1.1, as follows:

"Additional Incremental Capacity" means the 100 MW of Contract Capacity in addition to the Initial Capacity and the Incremental Capacity to become effective on the Second Capacity Increase Date.

"Initial Aggregate Subscribed Capacity" means, for each Buyer, such Buyer's aggregate subscribed Capacity prior to the Second Capacity Increase Date, as set forth under the "Aggregate Subscribed Capacity (Initial Capacity plus Incremental Capacity (MW))" column of Exhibit A.

"Second Capacity Increase Date" means May 1, 2024.

- (b) The first paragraph of Section 4.2 of the PPA is amended and restated in its entirety as follows:

The "Contract Capacity" shall be (a) before the Capacity Increase Date, 271 MW, subject to, for the purposes and during the time periods set forth therein, Rider 1 (the "Initial Capacity"), (b) on and after the Capacity Increase Date and before the Second Capacity Increase Date, the amount shown in Exhibit A as the "Aggregate Subscribed Capacity (Initial Capacity plus Incremental Capacity (MW))" and (c) on and after the Second Capacity Increase Date, the amount shown in Exhibit A as the "Aggregate Subscribed Capacity (Initial Capacity plus Incremental Capacity plus Additional Incremental Capacity (MW))", in each case, subject to adjustment under Section 3.2, Section 3.3, Section 12.4 and Article XX. Contract Capacity shall at all times be stated in MW.

- (c) A third paragraph is added to Section 4.2 of the PPA follows:

Each Buyer hereby subscribes for the amount of Additional Incremental Capacity set forth opposite its name on Exhibit A under the heading "Subscribed Amount of Additional Incremental Capacity (MW)" to become effective on the Second Capacity Increase Date, subject to adjustment in accordance with Section 3.3, Section 12.4 and Article XX. Upon the occurrence of the Second Capacity Increase Date, each Buyer's Capacity Pro Rata Share shall be automatically adjusted to reflect (a) the addition of such Buyer's subscription for Additional Incremental Capacity to such Buyer's then current Initial Capacity and

Incremental Capacity subscription amounts and (b) the then current aggregate Contract Capacity, and the Parties shall revise Exhibit A as soon as practicable to reflect the revised Capacity Pro Rata Shares and Capacity amounts of the Buyers.

- (d) The second sentence of Section 8.1 of the PPA is amended and restated in its entirety as follows:

The "Monthly Reservation Charge" shall be the product of (a) (i) for each Service Month commencing prior to the Capacity Increase Date, \$8,250/MW, (ii) for each Service Month commencing on or after the Capacity Increase Date and before the Second Capacity Increase Date, \$5,959/MW or (iii) for each Service Month commencing on or after the second Capacity Increase Date, \$5,949/MW, and (b) the then-current Contract Capacity, subject, however, to adjustment with respect to any particular Service Month as provided in Section 7.1(c) or Section 7.1(d), as applicable.

- (e) Section 12.1(b) of the PPA is hereby amended and restated in its entirety as follows:

A total of (i) one hundred (100) or more Unexcused Failed Hours shall occur during any rolling period of twelve (12) consecutive calendar months ending before the Capacity Increase Date, (ii) one hundred seventy-five (175) or more Unexcused Failed Hours shall occur during any rolling period of twelve (12) consecutive calendar months ending on or after the Capacity Increase Date but before the Second Capacity Increase Date or (iii) two hundred (200) or more Unexcused Failed Hours shall occur during any rolling period of twelve (12) consecutive calendar months ending on or after the Second Capacity Increase Date.

- (f) The first sentence of Section 12.3(b) of the PPA is hereby amended by adding the following to the end of the first sentence thereof:

In addition to the remedies set forth in Section 12.3(a), once a Seller Event of Default under Section 12.1(b) has occurred, the enhanced damages provided for in Section 7.1(d) shall apply until a rolling period of twelve (12) consecutive calendar months has passed (including calendar months before the occurrence of such Event of Default) during which Seller has had (i) less than one hundred (100) Unexcused Failed Hours, if such twelve-month period ends before the Capacity Increase Date, (ii) less than one hundred seventy-five (175) Unexcused Failed Hours, if such twelve-month period ends on or after the Capacity Increase Date but before the Second Capacity Increase Date or (iii) less than two hundred (200) or more Unexcused Failed Hours, if such twelve-(12) month period ends on or after the Second Capacity Increase Date.

- (g) Section 12.4 of the PPA is hereby amended and restated in its entirety as follows:

In the event of termination of this Agreement with respect to any defaulting Buyer(s) pursuant to Section 12.3(c)(i), absent agreement in writing by Seller and

the remaining Buyers on a different re-allocation (and/or the addition of new buyers under this Agreement), each Buyer that remains as a Party to this Agreement shall, effective as of the date of termination as to the defaulting Buyer(s), (a) increase its amount of Initial Aggregate Subscribed Capacity subscribed hereunder by an amount equal to (x) such Buyer's then current Initial Aggregate Subscribed Capacity amount, divided by the sum of all remaining Buyers' then current Initial Aggregate Subscribed Capacity amounts, times (y) the Initial Aggregate Subscribed Capacity amount held by the terminated Buyer(s) and (b) increase its amount of Additional Incremental Capacity subscribed hereunder by an amount equal to (x) such Buyer's then current Additional Incremental Capacity amount, divided by the sum of all remaining Buyers' then current Additional Incremental Capacity amounts, times (y) the Additional Incremental Capacity amount held by the terminated Buyer(s); provided, however, that in no event shall any such increase (whether caused by a single Buyer's default and termination or the cumulative result over time of multiple Buyers' defaults and termination) result in a Buyer having an Initial Aggregate Subscribed Capacity amount that exceeds one hundred twenty percent (120%) of its Initial Aggregate Subscribed Capacity amount as reflected under the column entitled "Baseline – Initial Aggregate Subscribed Capacity (MW)" on Exhibit Q or an Additional Incremental Capacity amount that exceeds one hundred twenty percent (120%) of its Additional Incremental Capacity amount as reflected under the column entitled "Baseline – Additional Incremental Capacity (MW)" on Exhibit Q (each, a "Step-Up Cap") without the prior consent of such Buyer; provided further that to the extent one or more terminations would result in application of either Step-Up Cap, and if requested by Seller, Buyers shall work in good faith using commercially reasonable efforts to obtain additional buyers to take and pay for the Contract Capacity affected by application of such Step-Up Cap. The addition of any such additional buyers shall be subject to the prior written consent of Seller, which shall not be unreasonably withheld. In the event that either Step-Up Cap applies (*i.e.*, to the extent that one or more Buyer(s) have not consented to waive application of such Step-Up Cap) and no additional buyers are added to this Agreement, the Contract Capacity will be reduced to the total of the remaining Buyers' increased Capacity amounts; provided, however, that if the effect of this provision would be to reduce the Contract Capacity to less than (A) 160 MW at any time before the Capacity Increase Date, (B) 280 MW at any time on or after the Capacity Increase Date but before the Second Capacity Increase Date or (C) 320 MW at any time on or after the Second Capacity Increase Date, Seller may terminate this Agreement in its entirety, without penalty or further liability on the part of the Parties, upon prior notice thereof to the Administrative and Scheduling Agent of at least one hundred eighty (180) days. In all cases of the reallocation of Capacity among Buyers and/or the addition of new buyers under this Section 12.4, Exhibit A shall be amended to reflect the revised Capacity Pro Rata Shares and Capacity amounts in respect of the remaining Buyers; in addition, where applicable, the reduced Contract Capacity shall also be reflected on the amended Exhibit A. All such changes to Exhibit A shall be effective as of the first calendar day of the month immediately following

the termination of the defaulting Buyer pursuant to Section 12.3(c). Notwithstanding anything else in this Agreement, the step-up obligations of the Buyers hereunder shall not require any non-defaulting Buyer to pay any damages, arrearages, or any other costs related to the defaulting Buyer's or Buyers' obligations prior to the effective date of the termination.

- (h) Exhibit A to the PPA is replaced with Exhibit A attached hereto.
- (i) Exhibit I to the PPA is replaced with Exhibit I attached hereto.
- (j) Exhibit J to the PPA is replaced with Exhibit J attached hereto.
- (k) Exhibit Q to the PPA is replaced with Exhibit Q attached hereto.

3) RUS Approval; Arizona Statutory Provisions.

(a) RUS Approval.

- (i) The effectiveness of the amendments set forth in Section 2 above (the "Second Amended Terms") as to those Buyers that are regulated by RUS (set forth on Appendix 1 attached hereto) (each, an "RUS Buyer") is conditioned on approval by RUS of the Second Amended Terms as they apply to each such RUS Buyer. No later than thirty (30) days after the Amendment Effective Date, each RUS Buyer shall make an appropriate submission to RUS seeking the approval of the Second Amended Terms with respect to such RUS Buyer. Each RUS Buyer shall use reasonable best efforts to secure RUS approval. Seller and each RUS Buyer shall (at its own expense) cooperate with and assist one another in securing the necessary approval from RUS; *provided* that to the extent any information to be provided by Seller to RUS is deemed confidential information by Seller, Seller's obligation to provide such information may be conditioned upon RUS agreeing to maintain its confidentiality pursuant to a protective order or a confidentiality agreement.
- (ii) In the event RUS should deny approval of the Second Amended Terms or require as a condition of approval of the Second Amended Terms any modifications of this Amendment or the PPA, then the Parties shall amend the PPA in accordance with Section 3(c) below.

(b) Arizona Statutory Provisions.

- (i) The Parties hereby acknowledge that the Buyers listed on Appendix 2 attached hereto are political subdivisions that, pursuant to A.R.S. § 38-511, "may, within three years after its execution, cancel any contract, without penalty or further obligation, ... if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of [that political subdivision] is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other

party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.” The cancellation “shall be effective when written notice from ... the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.” It is agreed and understood by all of the Parties that the representation by Spiegel & McDiarmid LLP of Buyers and the Administrative and Scheduling Agent, collectively, in connection with this Amendment is not intended to be and shall not constitute a basis for invoking cancellation pursuant to A.R.S. § 38-511.

- (ii) It is further acknowledged by the Buyers listed on Appendix 2 attached hereto that (A) each of them has engaged legal counsel and/or technical consultants to represent them in connection with the development of this Amendment and activities related thereto, which legal counsel or technical consultants simultaneously represented one or more other Buyers in connection with the same activities, and (B) such joint representation was consented to by the Buyers listed on Appendix 2 attached hereto and is a commonly used and efficient means of obtaining expert assistance with respect to matters of common interest to certain of the Buyers.
- (iii) Each of the Buyers listed on Appendix 2 attached hereto agrees that if it elects to exercise its cancellation right pursuant to A.R.S. § 38-511 (based upon facts that were not known to it at the time of execution of this Amendment, or based upon facts known prior to execution if, contrary to the parties’ intentions, such facts would constitute a valid basis for exercising the cancellation right), it shall provide at least twelve (12) months’ notice of such cancellation. If a Buyer listed on Appendix 2 attached hereto exercises its cancellation rights under this Section 3(b), then the Contract Capacity shall be reduced by the MW of Capacity subscribed by the terminated Buyer at the time of such termination, and the Capacity Pro Rata Shares of the remaining Buyers shall be adjusted accordingly in a revised Exhibit A. Notwithstanding the foregoing, if a Buyer listed on Appendix 2 attached hereto exercises its cancellation rights within three (3) years after the Amendment Effective Date, such cancellation shall affect only the Second Amended Terms, and the PPA shall be amended in accordance with Section 3(c) below.
- (c) If (i) RUS denies approval of the Second Amended Terms or requires as a condition of approval of the Second Amended Terms any modifications of this Amendment or the PPA, or (ii) if any Buyer listed on Appendix 2 attached hereto cancels the Second Amended Terms in accordance with Section 3(b) above, then absent agreement of the Parties to an alternative course of action, the PPA shall be amended as soon as practicable in a manner consistent with Appendix 3 attached hereto so as to retain the terms of the PPA in effect prior to the Amendment Effective Date with respect to Seller and the affected RUS Buyer(s) and/or the affected Buyer(s) listed on Appendix 2 attached hereto, as applicable.

All such affected and all unaffected Buyers shall cooperate in amending the PPA pursuant to this Section 3(c), and such amendments shall be effective upon execution by Seller and Buyers then having Capacity Pro Rata Shares in the aggregate of sixty-six percent (66%) or more.

- 4) Any term capitalized but not defined herein shall have the meaning given such term in the PPA.
- 5) Except as specified herein, all of the remaining terms, provisions and conditions of the PPA shall remain unchanged, in full force and effect and fully binding on the Buyers and Seller.

Signature Pages Follow

AGUILA IRRIGATION DISTRICT

By: _____
Name:
Title:
Date:

AK-CHIN ENERGY SERVICES

By: _____
Name:
Title:
Date:

BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT

By: _____
Name:
Title:
Date:

CITY OF SAFFORD

By: _____
Name:
Title:
Date:

CITY OF WILLIAMS

By: _____
Name:
Title:
Date:

ELECTRICAL DISTRICT NO. 2 OF PINAL COUNTY

By: _____
Name:
Title:
Date:

ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY

By: _____
Name:
Title:
Date:

ELECTRICAL DISTRICT NO. 4 OF PINAL COUNTY

By: _____
Name:
Title:
Date:

ELECTRICAL DISTRICT NO. 6 OF PINAL COUNTY

By: _____
Name:
Title:
Date:

ELECTRICAL DISTRICT NO. 7 OF MARICOPA COUNTY

By: _____
Name:
Title:
Date:

ELECTRICAL DISTRICT NO. 8 OF MARICOPA COUNTY

By: _____
Name:
Title:
Date:

GILA RIVER INDIAN COMMUNITY UTILITY AUTHORITY

By: _____
Name:
Title:
Date:

HARQUAHALA VALLEY POWER DISTRICT

By: _____
Name:
Title:
Date:

MARICOPA COUNTY MUNICIPAL WATER CONSERVATION DISTRICT NO. 1

By: _____
Name:
Title:
Date:

MCMULLEN VALLEY WATER CONSERVATION AND DRAINAGE DISTRICT

By: _____
Name:
Title:
Date:

MESQUITE POWER, LLC ("MESQUITE POWER")

By: _____
Name:
Title:
Date:

NAVAJO TRIBAL UTILITY AUTHORITY

By: _____
Name:
Title:
Date:

OCOTILLO WATER CONSERVATION DISTRICT

By: _____
Name:
Title:
Date:

ROOSEVELT IRRIGATION DISTRICT

By: _____
Name:
Title:
Date:

TOHONO O'ODHAM UTILITY AUTHORITY

By: _____
Name:
Title:
Date:

TONOPAH IRRIGATION DISTRICT

By: _____
Name:
Title:
Date:

TOWN OF THATCHER

By: _____
Name:
Title:
Date:

TOWN OF WICKENBURG

By: _____
Name:
Title:
Date:

Exhibit A

BUYER'S CAPACITY PRO RATA SHARES

BUYER	Before Capacity Increase Date		On and after Capacity Increase Date May 1, 2021			On and after Second Capacity Increase Date May 1, 2024		
	Subscribed Amount of Initial Capacity (MW)	Subscribed Amount of Incremental Capacity (MW)	Aggregate Subscribed Capacity (Initial Capacity plus Incremental Capacity (MW))	Capacity Pro Rata Share – Aggregate (Initial Capacity plus Incremental Capacity)	Subscribed Amount of Additional Incremental Capacity (MW)	Aggregate Subscribed Capacity (Initial Capacity plus Incremental Capacity plus Additional Incremental Capacity) (MW))	Capacity Pro Rata Share – Aggregate (Initial Capacity plus Incremental Capacity plus Additional Incremental Capacity)	
Aguila Irrigation District	3.00	4.00	7.00	0.01449	0.00	7.00	0.01201	
Ak-Chin Energy Services	5.00	3.00	8.00	0.01656	0.00	8.00	0.01372	
Buckeye Water Conservation & Drainage District	3.00	1.00	4.00	0.00828	0.00	4.00	0.00686	
City of Safford	15.00	4.00	19.00	0.03934	0.00	19.00	0.03259	
City of Williams	2.00	3.00	5.00	0.01035	0.00	5.00	0.00858	
Electrical District No. 2 of Pinal County	20.00	15.00	35.00	0.07246	0.00	35.00	0.06003	
Electrical District No. 3 of Pinal County	85.00	65.00	150.00	0.31056	60.00	210.00	0.36021	

Electrical District No. 4 of Pinal County	25.00	15.00	40.00	0.08282	0.00	40.00	0.06861
Electrical District No. 6 of Pinal County	3.00	1.00	4.00	0.00828	0.00	4.00	0.00686
Electrical District No. 7 of Maricopa County	3.00	3.00	6.00	0.01242	0.00	6.00	0.01029
Electrical District No. 8 of Maricopa County	25.00	21.00	46.00	0.09524	6.00	52.00	0.08919
Gila River Indian Community Utility Authority	30.00	30.00	60.00	0.12422	5.00	65.00	0.11149
Harquahala Valley Power District	5.00	11.00	16.00	0.03313	0.00	16.00	0.02744
Maricopa County Municipal Water Conservation District No. 1 McMullen Valley Water	3.00	2.00	5.00	0.01035	0.00	5.00	0.00858

McMullen Valley Water Conservation & Drainage District	5.00	11.00	16.00	0.03313	3.00	19.00	0.03259
Navajo Tribal Utility Authority	20.00	15.00	35.00	0.07246	15.00	50.00	0.08576
Ocotillo Water Conservation District	1.00	0.00	1.00	0.00207	0.00	1.00	0.00172
Roosevelt Irrigation District	8.00	2.00	10.00	0.02070	0.00	10.00	0.01715
Tohono O'odham Utility Authority (new Buyer)	0.00	0.00	0.00	0.00000	6.00	6.00	0.01029
Tonopah Irrigation District	3.00	4.00	7.00	0.01449	2.00	9.00	0.01544
Town of Thatcher	7.00	2.00	9.00	0.01863	0.00	9.00	0.01544
Town of Wickenburg (new Buyer)	0.00	0.00	0.00	0.00000	3.00	3.00	0.00515
TOTAL	271.00	212.00	483.00	1.00000	100.00	583.00	1.00000

NOTES:

· The amounts set forth in the table above shall be subject to adjustment from time to time in accordance with the Agreement.

Exhibit I

BUYERS THAT ARE TRIBAL UTILITY BUYERS

Tribal Utility Buyer	Associated Tribe, Nation, and/or Community
Ak-Chin Energy Services	Ak-Chin Indian Community
Gila River Indian Community Utility Authority	Gila River Indian Community
Navajo Tribal Utility Authority	Navajo Nation
Tohono O'odham Utility Authority	Tohono O'odham Nation

Exhibit J

ADDRESS FOR NOTICE TO PARTIES

TO SELLER:

Mesquite Power, LLC
c/o Onward Energy
600 Seventeenth St Suite 2400 S
Denver, CO 80202
Attention: Jeffrey Spurgeon
Sr. Director, Asset Management & Commercial Operations - Gas
Telephone: (303) 623-3013 Office, (704) 533-5715 Mobile
Jeffrey.Spurgeon@OnwardEnergy.com

TO ADMINISTRATIVE AND SCHEDULING AGENT:

Dennis Delaney
SPPA Project Manager
K.R. Saline & Associates, PLC
160 North Pasadena, Suite 101
Mesa, AZ 85201-6764
480-610-8741
dld@krsaline.com

TO BUYERS:

Aguila Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager	Ak-Chin Energy Services 42507 W Peters & Nall Rd Maricopa, AZ 85138 Attn: ACES Board Chairman <i>With a copy to:</i> Ed Gerak, Power Manager Utility Strategies Consulting Group 20489 W. Walton Dr. Buckeye, AZ 85396
Buckeye Water Conservation and Drainage District P.O. Box 1726 Buckeye, AZ 85326-0160 Attn: General Manager	City of Safford P.O. Box 272 Safford, AZ 85548 Attn: City Manager

City of Williams 113 South 1 st Street Williams, AZ 86046 Attn: City Manager	Electrical District Number Two of Pinal County Mailing Address: P.O. Box 548 Coolidge, AZ 85128 Physical Address: 5575 N. Eleven Mile Corner Rd. Casa Grande, AZ 85194 Fax: 520-723-5252 Attn: General Manager
Electrical District Number Three of Pinal County 41630 W. Louis Johnson Dr. Maricopa, AZ 85239 Attn: General Manager	Electrical District Number Four of Pinal County P. O. Box 605 Eloy, AZ 85131 Attn: District Manager
Electrical District Number Six 34630 N. Schnepf Rd. San Tan Valley, AZ 85140 Attn: Board President	Electrical District Number Seven of Maricopa County 14629 West Peoria Ave Waddell, AZ 85355 Attn: District Manager
Electrical District Number Eight of Maricopa County P.O. Box 99 Salome, AZ 85348 Attn: General Manager	Gila River Indian Community Utility Authority 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attn: General Manager <i>With copies to:</i> 6636 W. Sundust Rd. Ste 5091 Chandler, AZ 85226-4211 Attention: Finance Director The Rothstein Law Firm 80 East Rio Salado Parkway, Suite 710 Tempe, Arizona 85281 Attn: Denten Robinson
Harquahala Valley Power District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager	Maricopa Water District P.O. Box 900 Waddell, AZ 85355-0900 Attn: General Manager

McMullen Valley Water Conservation & Drainage District P.O. Box 70 Salome, AZ 85348 Attn: General Manager	Navajo Tribal Utility Authority Route 12 North P. O. Box 170 Fort Defiance, AZ 86504-0170 Attn: General Manager
Ocotillo Water Conservation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Manager	Roosevelt Irrigation District 103 West Baseline Road Buckeye, AZ 85326 Attn: Superintendent
Tohono O'odham Utility Authority P.O. Box 816 Sells, AZ 85634 Attn: General Manager	Tonopah Irrigation District P.O. Box 1267 Mesa, AZ 85211-1267 Attn: District Administrator
Town of Thatcher P. O. Box 670 Thatcher, AZ 85552 Attn: Town Manager	Town of Wickenburg 155 N Tegner Street Suite A Wickenburg, AZ 85390 Attn: Town Manager

Exhibit Q**BASELINE AMOUNTS**

BUYER	Baseline – Initial Aggregate Subscribed Capacity (MW)	Baseline – Additional Incremental Capacity (MW)
Aguila Irrigation District	7.00	0.00
Ak-Chin Energy Services	8.00	0.00
Buckeye Water Conservation & Drainage District	4.00	0.00
City of Safford	19.00	0.00
City of Williams	5.00	0.00
Electrical District No. 2 of Pinal County	35.00	0.00
Electrical District No. 3 of Pinal County	150.00	60.00
Electrical District No. 4 of Pinal County	40.00	0.00
Electrical District No. 6 of Pinal County	4.00	0.00
Electrical District No. 7 of Maricopa County	6.00	0.00
Electrical District No. 8 of Maricopa County	46.00	6.00
Gila River Indian Community Utility Authority	60.00	5.00
Harquahala Valley Power District	16.00	0.00
Maricopa County Municipal Water Conservation District No. 1 McMullen Valley Water	5.00	0.00
McMullen Valley Water Conservation & Drainage District	16.00	3.00
Navajo Tribal Utility Authority	35.00	15.00
Ocotillo Water Conservation District	1.00	0.00

BUYER	Baseline – Initial Aggregate Subscribed Capacity (MW)	Baseline – Additional Incremental Capacity (MW)
Roosevelt Irrigation District	10.00	0.00
Tohono O’odham Utility Authority (new Buyer)	0.00	6.00
Tonopah Irrigation District	7.00	2.00
Town of Thatcher	9.00	0.00
Town of Wickenburg (new Buyer)	0.00	3.00
TOTAL	483.00	100.00

Appendix 1

AMENDMENT RUS BUYERS

1. Navajo Tribal Utility Authority
2. Tohono O'odham Utility Authority

Appendix 2

AMENDMENT BUYERS SUBJECT TO A.R.S. § 38-511

1. City of Safford
2. City of Williams,
3. Town of Thatcher
4. Town of Wickenburg

Appendix 3

MODIFICATION OF SECOND AMENDED TERMS

The following changes would be made to the PPA if required to cancel the Second Amended Terms with respect to any Buyer or Buyers (each, an "Affected Buyer" for purposes of this Appendix 3) pursuant to Section 3(c) of this Amendment.

1. Each Affected Buyer's portion of the Additional Incremental Capacity would be zero at all times.
2. In accordance with elections by the remaining Buyers, increases would be made to the Additional Incremental Capacity amounts of one or more of the remaining Buyers, which increases in aggregate shall not exceed the total Additional Incremental Capacity amount(s) of the Affected Buyer(s).
3. As of the Second Capacity Increase Date,
 - a. If elections made under item 2 above failed to fully reallocate the Additional Incremental Capacity of the Affected Buyer(s), the Contract Capacity would be reduced by the amount of the Additional Incremental Capacity of the Affected Buyer(s) that was not reallocated.
 - b. Exhibit A would be revised to reflect the updated Capacity Pro Rata Shares of all Buyers and, if applicable, to reflect the reduced Contract Capacity.
 - c. The Monthly Reservation Charge would be bifurcated so that (i) each Affected Buyer would pay \$5,959/MW for its Initial Aggregate Subscribed Capacity amount and (ii) each other Buyer would pay \$5,949/MW for its total capacity amount (i.e., its Initial Aggregate Subscribed Capacity amount and its Additional Incremental Amount).
 - d. The working capital fund would be bifurcated so that each Affected Buyer's required contribution to the fund is based on its Initial Aggregate Subscribed Capacity amount and the above pricing provisions, while all other Buyers' contributions would be based on their total capacity amounts and the amended capacity and energy pricing.

RESOLUTION No. 1422

**RESOLUTION OF THE CITY OF WILLIAMS
APPOINTING TIM PETIT AS WILLIAMS' DESIGNATED DIRECTOR
& JULIE WALKER AS WILLIMAS' ALTERNATE DIRECTOR
FOR SOUTHWEST PUBLIC POWER AGENCY, INC.**

WHEREAS the City Council of the City of Williams (Williams) is appointing Tim Pettit as the Williams' Director of the Southwest Public Power Agency, Inc. ("SPPA") and Julie Walker as the Williams' alternate to such Director;

NOW, THEREFORE, BE IT RESOLVED THAT:

The City of Williams hereby appoints Tim Petit to be the Williams' designated SPPA Director. And Julie Walker as the Williams' appointed alternate Director.

Approved and adopted this 28 day of April 2022.

Mayor John W. Moore

Attest:

City Clerk Pamela Galvan

Staff Report



To: Mayor and Council

From: Tim Pettit, City Manager and
Pamela Galvan, City Clerk/HR Director

Date: April 12, 2022

Subject: Continuation of COVID pay

Background: The city council decided on April 22, 2021, to continue to pay out COVID pay to those individuals who tested positive and instructed to stay home. Council chose to go beyond the FFRCA required government end date of December 31, 2020 for the benefit of the employee. The city did not qualify for a tax credit so to date, the city's out-of-pocket since April 2020, FFRAC required coverage, is \$52,639.24.

It is noted that during the council meeting it was suggested, as long as it is COVID related we continue to pay until we get through COVID; like the flu, COVID is likely to continue, but as time moves forward it continues on a downhill climb in cases. Another councilmember agreed to pay until the Federal government ends it, then we end it; and now we are far beyond that point and the coverage/payment for one testing positive continues.

Fiscal Impact: *To date, \$52,639.24*

Recommendation: *Staff is looking to council for direction in either the continuation of COVID pay or to discontinue.*



Multimodal Planning

Our True North: Safely Home

Douglas A. Ducey, Governor
John S. Halikowski, Director
Dallas Hammit, State Engineer
Gregory Byres, Division Director

April 27, 2021

Mr. Tim Pettit
Community Development Director
City of Williams
113 So. First Street
Williams, AZ 86046

Subject: ADOT Airport Surface Treatment Program 2022
H.A. Clark Memorial Field Airport Helipad & Twy A Sections 10 - 1-inch AC Overlay and
Pavement Markings

Dear Mr. Pettit:

ADOT MPD – Aeronautics Group has completed the planning and program development phase of the State's Airport Pavement Preservation Program for fiscal year 2022. This is a program that ADOT Aeronautics began the groundwork for in 2000 and updates every three to four years when they contract to have pavements at all the State's public airports evaluated and rated as to their pavement condition index (PCI). The results of the current study show the pavement maintenance recommendations for the airport pavements that still have useable life remaining. Each airport in the study will receive a complete report specific to their respective airports.

Maintenance options such as crack seals, seal coats, thin overlays, and PCCP joint repairs are scheduled for individual runways, taxiways, and aprons at various airports for each of the years in a five-year period. Projects are tentatively scheduled based on PCI priorities and the program's funding budget. H.A. Clark Memorial Field Airport is included in fiscal year 2022 of the program for the Helipad Section 10 1-inch AC Overlay and Pavement Markings with a construction estimate of \$7,000 and Taxiway A Section 10 1-inch AC Overlay and Pavement Markings with a construction estimate of \$698,000.

Under this program, ADOT's Program Manager will design, support the bidding process and administer the construction of the maintenance projects. ADOT will pay 100% of the design and construction administration costs. ADOT will then pay the full construction costs to the contractor. The Sponsor will pay, directly to ADOT, their 10 percent share of the construction cost (approx. \$700 and \$69,800 for a total of \$70,500 for the City of Williams).

After review of the current recommendations we have included the following treatments: 1-inch AC Overlay and Pavement Markings. We have included the preliminary program for H.A. Clark Memorial Field Airport consisting of an aerial schematic exhibit and a preliminary opinion of probable cost. Prior to finalizing the program and proceeding with the design and construction we need to verify the Sponsor's intentions for participation in this program. It is expected that actual construction will begin no sooner than April 2022.

Please return by email to Matthew Munden at mmunden@azdot.gov and Tammy Martelle, Kimley-Horn and Associates at tammy.martelle@kimley-horn.com a copy of the executed letter indicating your

position on this matter **as soon as possible, but no later than May 21, 2021**. Upon receipt of your acknowledgement to participate in this program, a Grant Agreement with the State and the invoice for your 10 percent (10%) share of the construction cost will be submitted electronically to you via email. Instructions will be provided for your execution of the Grant Agreement using DocuSign. Payment of your invoice for your 10% share of the construction costs must be received by ADOT before bidding and construction can commence on your project.

ADOT will collect your 10 percent (10%) share based on construction estimates at the time the Grant Agreement is issued. Upon completion of the Project, ADOT will produce a final accounting reconciliation of the construction costs. In the event, actual construction cost exceeds the estimate, the STATE will invoice the SPONSOR for the remaining contribution required to equal 10% of the actual construction cost. In the event the actual construction cost is less than the estimate, the STATE will reimburse the SPONSOR for any overpayment.

Also, please find attached a document for Recipient Contact Information that needs to be filled out and returned. This information is necessary for the IGA to be sent for signatures.

If you have any questions or desire any additional information, please don't hesitate to contact me at (602) 712-7647.

Sincerely,

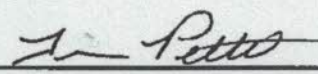
ADOT MPD – AERONAUTICS GROUP

DocuSigned by:

C2D0E33391684F4
Matthew Munden
State Aviation Engineer

cc: Steve Reeder, Kimley-Horn & Associates

I acknowledge that the projects included for Our Airport under the ADOT Airport Pavement Preservation Program for 2022 is in the best interest for our Airport Facility and wish to participate in this program.

 5-3-21
(Signature) Date

Tim Pettit, Community Development Dir.
(Print Name and Title)

2022 APMS H.A. Clark Memorial Field Airport –
Opt-In – Preliminary Opinion of Probable Cost

Pavement	Section	Description	Estimate
HP01WI	10	1-inch AC Overlay and Pavement Markings	\$7,000
TWAWI	10	1-inch AC Overlay and Pavement Markings	\$698,000
		Total	\$705,000
		10% Local Share	\$70,500

HELIPAD 01, Section 10



TWY A, Section 10

