

CJY-40-13

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL -- Third Year, 2013

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'IYATI'; RESCINDING CAP-21-13 AND RECOMMENDING AND APPROVING AMENDMENT NO. 1 TO THE INDENTURE OF LEASE EFFECTIVE DECEMBER 23, 1969 BETWEEN THE NAVAJO NATION AND ARIZONA PUBLIC SERVICE COMPANY, DEPARTMENT OF WATER AND POWER OF CITY OF LOS ANGELES, NEVADA POWER COMPANY, SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

BE IT ENACTED:

1. The Navajo Nation hereby finds the following with respect to this resolution:
  - A. The Secretary of the U.S. Department of Interior (Secretary) approved an Indenture of Lease, titled "Navajo Project-Indenture of Lease, Navajo Units 1, 2, and 3" and attached hereto as Exhibit E, effective December 23, 1969, between the Navajo Nation and Arizona Public Service Company (APS), Department Water and Power of City of Los Angeles (LADWP), Nevada Power (NP), the Salt River Project Agricultural Improvement and Power District (SRP), and Tucson Electric Power Company (TEP), hereinafter, collectively referred to as the Lessees, for the construction, operation, and maintenance of Units 1, 2, and 3 of the Navajo Generating Station (NGS) and associated facilities; and
  - B. The Indenture of Lease between the Navajo Nation and the Lessees provides an Option and/or Right to the Lessees to extend the Lease for an additional 25 year period to December 22, 2044; and
  - C. LADWP has informed the participants of the NGS that LADWP will terminate its 21.2% ownership interest in the NGS before the expiration date of December 22, 2019 or earlier; and


- D. SRP is negotiating a sale agreement with LADWP, which is subject to the approval of their respective governing bodies, to potentially acquire LADWP's interest in the NGS; and
  - E. The Navajo Nation and SRP have negotiated Amendment No. 1 to the Indenture of Lease, (Amendment No. 1), attached hereto as Exhibit A, that, among other things, extends the term of the Lease and provides the Navajo Nation's consent to the issuance, renewal and/or extension of the 323 Grants of Rights-of-Way and Easement listed in Exhibits 1 and 2 of Amendment No. 1 through December 22, 2044; and
  - F. The continued operation of the NGS will allow for employment at the Peabody Kayenta Mine and the NGS to be continued and retained. The Navajo Nation will also continue to receive current revenues that are generated from the Peabody Kayenta Coal Mine and additional revenues as provided for in Amendment No. 1; and
  - G. Amendment No. 1 will provide the Navajo Nation up to approximately forty-three million dollars (\$43,000,000.00) per year (annually adjusted) through 2044, as set forth in Exhibits A and B; and
  - H. The Navajo Generating Station and Kayenta Mine: An Economic Impact Study, is attached as Exhibit C; and
  - I. It is in the best interest of the Navajo Nation to approve Amendment No. 1.
2. The Navajo Nation hereby rescinds CAP-21-13 with its attachments, attached hereto as Exhibit 1.
  3. The Navajo Nation hereby recommends and approves Amendment No. 1 to the Indenture of the Lease, as set forth in Exhibit A, between the Navajo Nation, APS, LADWP, NP, SRP and TEP; and
  4. Nothing in Amendment No. 1 or the Indenture of Lease hereto precludes the Navajo Nation from asserting a claim(s) for water rights to the Upper Colorado River Basin or settlement of such claim(s) or hinders the Navajo Nation from asserting

(i) through December 22, 2019, a claim to the State of Arizona's 50,000 acre foot allocation of Upper Colorado River Basin water or (ii) from and after December 23, 2019, a claim to any quantity of water from the Upper Colorado River Basin for its lands in Arizona, and

5. Amendment No. 1 is conditioned on SRP requesting a meeting with the Resources and Development Committee (RDC) of the Navajo Nation Council on an annual basis to discuss potential opportunities that may increase the utilization of Navajo-owned business and suppliers by the Navajo Generating Station. The annual meeting request shall be submitted to the Chairperson and Vice-Chairperson of the RDC. The meetings shall include representatives from the Navajo Nation Division of Economic Development; and
6. The Council must approve these documents on or before July 31, 2013 and the President of the Navajo Nation must execute the necessary documents on or before July 31, 2013. And on subsection B. Appropriate officials and employees within the Navajo Nation Division of Natural Resources and the Navajo Nation Department of Justice must approve these agreements on or before July 31, 2013. The Navajo Nation Office of the Attorney General must execute these agreements on or before July 31, 2013.
7. The Navajo Nation hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to effectuate the intent of this resolution.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 16 in favor and 6 opposed, this 17<sup>th</sup> day of July 2013.

  
Mel R. Begay, Pro Tem Speaker  
Navajo Nation Council


7/20/13

Date

Motion: Honorable Duane Tsinigine  
Second: Honorable David L. Tom

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this 30th day of July 2013.

  
\_\_\_\_\_  
Ben Shelly, ~~President~~  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this \_\_\_\_\_ day of \_\_\_\_\_ 2013 for the reason(s) expressed in the attached letter to the Speaker.

\_\_\_\_\_  
Ben Shelly, President  
Navajo Nation

AMENDMENT NO. 1 TO  
INDENTURE OF LEASE  
NAVAJO UNITS 1, 2 AND 3

BETWEEN

THE NAVAJO NATION

AND

ARIZONA PUBLIC SERVICE COMPANY

DEPARTMENT OF WATER AND POWER OF CITY OF LOS ANGELES

NEVADA POWER COMPANY dba NV ENERGY

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

TUCSON ELECTRIC POWER COMPANY

DATED \_\_\_\_\_, 20\_\_

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## AMENDMENT NO. 1 TO INDENTURE OF LEASE

This Amendment No. 1 (the "Amendment") to the Indenture of Lease dated September 29, 1969 (the "Lease") is by and between the Navajo Nation, acting through the Navajo Nation Council and its President, for and on behalf of the Navajo Nation (the Navajo Nation is referred to as "Lessor"), and Arizona Public Service Company, Department of Water and Power of the City of Los Angeles, Nevada Power Company dba NV Energy, Salt River Project Agricultural Improvement and Power District, and Tucson Electric Power Company (formerly known as Tucson Gas & Electric Company) (collectively, together with their successors and assigns, referred to as "Lessees", and each individually referred to as "Lessee"). The Navajo Nation and the Lessees are hereinafter collectively referred to as the "Parties".

The Parties agree as follows:

### I. RECITALS

- A. Lessor and Lessees entered into the Lease for the lease of the Leased Lands.
- B. Lessees wish to exercise their right and option to extend the Lease Term as provided in Section 6 of the Lease from and after December 23, 2019, as further amended by the terms and provisions of this Amendment. Except as modified by this Amendment, all of the terms and conditions of the Lease shall remain in full force and effect.
- C. In addition, the Lessees wish to have the Navajo Nation provide its consent to the issuance or extension by the Secretary of the 323 Grants, as more particularly provided in this Amendment.
- D. Under federal law this Amendment requires the approval of the Secretary of the Interior or his delegee to become effective.
- E. The Secretary will not make a decision with respect to the approval of this Amendment prior to compliance with applicable laws.

- F. The Parties desire to engage in financial transactions related to this Amendment in advance of the Secretary's decision.
- G. The Parties recognize that pursuant to other agreements related to the Navajo Project and as recognized in the Lease, SRP owns 24.3% of the Navajo Generating Station for the use and benefit of the United States of America (the "United States' Share").
- H. The Parties recognize that pursuant to the other agreements related to the Navajo Project SRP is precluded from agreeing to terms in this Amendment that affect the United States' Share without the prior written consent of the United States.
- I. Pursuant to other agreements related to the Navajo Project, the United States and the Lessees are required to provide to SRP advance payment for their separate portions of costs and expenses to be paid by SRP as Operating Agent of NGS, including payments to be paid to the Navajo Nation under the Lease and this Amendment.
- J. Upon receipt by SRP of advance payments from the United States and the Lessees, SRP, as the Operating Agent, shall then make any payment required by the terms of this Amendment to the Navajo Nation.
- K. The Parties recognize that in the event the Secretary were to decide to approve this Amendment and the United States were to provide written notice to SRP providing consent to SRP's execution of this Amendment for the use and benefit of the United States, insofar as this affects the United States' Share, time is required for the United States to secure necessary funds as, for example, through the issuance of a bond by the operating agent for the Central Arizona Project.

## II. DEFINITIONS

"323 Grant" has the meaning set forth in the Lease for those new right-of way and easement grants or extension of existing rights-of-way and easements described in Exhibit 1 and Exhibit 2



attached hereto.

"Additional Payment Accrual Period" has the meaning set forth in Section VI(B) (Additional Payments).

"Additional Payments" has the meaning set forth in Section VI(A) (Additional Payments).

"Affiliate" means, when used in reference to the Participants in the Navajo Project, any other Person that directly, or indirectly, controls, is controlled by, or is under common control with a Participant. For purposes of this definition, "control," "controlled by" and "under common control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities, participant interests, other ownership interests or contract.

"Amendment" has the meaning set forth in the opening paragraph of this Amendment.

"Beginning Index" has the meaning set forth in Section VIII(A) (Payment Escalation).

"CAWCD" means the Central Arizona Water Conservation District.

"Chapter Fund" has the meaning set forth in Section XVI(A) (Local Community Involvement).

"Consumer Price Index" means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index – U.S. City Average, All Urban Consumers.

"Continued Transmission System Participants" has the meaning set forth in Section IX(C)(Termination; Termination of Payments).

"Effective Date" has the meaning set forth in Section III(B) (Term; Effectiveness; Payments).

"Escalation Factor" has the meaning set forth in Section VIII(A) (Payment Escalation).

"Existing Lease Payments" has the meaning set forth in Section V(B)(2) (Lease Payments).

"Extension Index" has the meaning set forth in Section VIII(A) (Payment Escalation).

"Force Majeure Event" means that neither the Navajo Nation nor any or all of Lessees, shall be

deemed to be in default in respect to any obligation under the Lease, as amended, if prevented from fulfilling such obligation by reason of "uncontrollable forces", as such term is defined in Section 24 of the Lease, but excluding action or inaction by the Navajo Nation tribal courts, Council and its President, for and on behalf of the Navajo Nation.

"Four Corners Lease Amendment" has the meaning set forth in Section XV(E)(1) (Consent to Grants of Right-of-Way and Easement).

"Four Corners Participants" has the meaning set forth in Section XV(E) (Consent to Grants of Right-of-Way and Easement).

"Initial Signing Payment" has the meaning set forth in Section VII (United States Signing Payment).

"LADWP" means Department of Water and Power of the City of Los Angeles.

"Lease" means the Indenture of Lease—Navajo Units 1, 2 and 3 between the Navajo Tribe of Indians and Arizona Public Service Company, Department of Water and Power of City of Los Angeles, Nevada Power Company, Salt River Project Agricultural and Improvement and Power District and Tucson Gas and Electric Company effective as of December 23, 1969.

"Lease Payment Accrual Period" has the meaning set forth in Section V(B)(1) (Lease Payments).

"Lease Payments" has the meaning set forth in Section V(A)(3) (Lease Payments).

"Leased Lands" has the meaning set forth in the Lease.

"Lease Year" Lease Year 1 means the date this Amendment is signed by the Navajo Nation through the following December 22. Each subsequent Lease Year is the twelve (12) full months beginning December 23 of the preceding Lease Year through December 22 of the subsequent Lease Year.

"Lessee(s)" has the meaning set forth in the opening paragraph of this Amendment.

"Lessor" has the meaning set forth in the opening paragraph of this Amendment.

"Moenkopi-Eldorado Transmission Line" has the meaning set forth in Section XV(E)(1) (Consent to Grants of Right-of-Way and Easement).

"MW" means megawatt.

"Navajo Generating Station Scholarships" has the meaning set forth in Section XVII(A) (Scholarship).

"Navajo Nation" means the Navajo Nation (formerly known as The Navajo Tribe of Indians as stated in the Lease), and includes any political subdivision, including but not limited to any Chapter, Township, Township Commission, enterprise or taxing authority of the Navajo Nation.

"Navajo Nation Interest" has the meaning set forth in Section XI(A) (Navajo Nation Ownership of the Navajo Project).

"Navajo Nation Purchase Option" has the meaning set forth in Section XI(A) (Navajo Nation Ownership of the Navajo Project).

"Navajo Nation Right of First Refusal Option" has the meaning set forth in Section XI(C) (Navajo Nation Ownership of the Navajo Project).

"Navajo Project" means the Navajo Generating Station, associated facilities, railroad and transmission system.

"Net Capacity" means the sum of the unit values reported to the U.S. Energy Information Administration on Form EIA-860 Schedule 3, Part B, Line 2 for summer capability. This data can also be found on the EIA website at <http://www.eia.gov/electricity/data/eia860/index.html>. If the U.S. Energy Information Administration Form EIA-860 Schedule 3, Part B, becomes unavailable to the public, then there shall be substituted a comparable reference, reasonably acceptable to all Parties.

"NGS" means the Navajo Generating Station as defined in the Lease.

"NGS Community Chapters" means the Navajo Nation Bodaway/Gap, Cameron, Chilchinbeto, Coal Mine Canyon, Coppermine, Dennehotso, Kaibeto, Kayenta, LeChee, Navajo Mountain, Oljato, Shonto, Tonalea, Ts'ah Bii Kin and Tuba City chapters, in which the Navajo Project, associated facilities and 323 Grants are located.

"Non-U.S. Participant" or "Non-U.S. Participants" means respectively, an individual entity of the following list of entities or all of the following entities collectively: Arizona Public Service Company, LADWP, NV Energy, Tucson Electric Power Company and SRP, where SRP's obligation is limited only to that portion of the Navajo Project owned for its own use and benefit.

"Non-U.S. Participant" or "Non-U.S. Participants" shall expressly exclude any SRP ownership in the Navajo Project for the use and benefit of the United States. "Non-U.S. Participant" or "Non-U.S. Participants" shall also include any entity other than the U.S. purchasing a future interest in the Navajo Project.

"Notice of Cessation" has the meaning set forth in Section IX(B) (Termination; Termination of Payments).

"Notice of Decision" has the meaning set forth in Section IX(A) (Termination; Termination of Payments).

"Notice of Lease Termination" has the meaning set forth in Section IX(B) (Termination; Termination of Payments).

"Notice of Planned Cessation" has the meaning set forth in Section IX(A) (Termination; Termination of Payments).

"Operating Agent" means SRP as the operating agent of NGS, and its successors.

"Participant" or "Participants" means respectively, an individual entity of the following list of

entities or all of the following entities collectively: Arizona Public Service Company, LADWP, NV Energy, Tucson Electric Power Company, SRP and the United States of America, acting through the Bureau of Reclamation pursuant to a delegation of authority by the Secretary of Interior. "Participant" or Participants" shall also include any entity other than the U.S. purchasing a future interest in the Navajo Project as provided for in other Navajo Project agreements.

"Parties" has the meaning set forth in the opening paragraph of this Amendment

"Payments" means collectively, the payments under this Amendment, including the Signing Bonus, Lease Payments, Additional Payments, payments to the Chapter Fund, payments to the Scholarship Fund, and the Signing Payment.

"Person" means an individual, corporation, unincorporated organization, partnership, limited liability company, joint venture, trust, governmental agency, Tribal government or tribally owned enterprise or other entity.

"Phase I ESA" has the meaning set forth in Section XIV(E)(1) (Removal of Improvements; Restoration).

"Remainder Signing Payment" has the meaning set forth in Section VIII(E) (Payment Escalation).

"Reservation Lands" has the meaning set forth in the Lease.

"Revocation Notice" has the meaning set forth in Section X (Revocation of Amendment).

"Scholarship Fund" has the meaning set forth in Section XVII(A) (Scholarship).

"Secretary" means the Secretary of the United States Department of the Interior or his/her authorized representative or such person or agency as he/she may expressly designate to perform the functions provided in the Lease and this Amendment to be performed by him/her or such federal agency as may succeed to the duties of the Secretary of the Interior under the Lease and this

Amendment.

"Secretary Approval" means the Secretary's approval of this Amendment in accordance with title 25, United States Code Section 415(a), written authorization to SRP to execute the amendment for the use and benefit of the United States and issuance of new or renewal of existing 323 Grants for use by the Navajo Project.

"Signing Bonus" has the meaning set forth in Section IV (Signing Bonus).

"Signing Bonus Deadline" has the meaning set forth in Section IV (Signing Bonus).

"SRP" means the Salt River Project Agricultural Improvement and Power District.

"Term" has the meaning set forth in Section III(C) (Term; Effectiveness; Payments).

"Transmission Facility Removal Notice" has the meaning set forth in Section XIV(E) (Removal of Improvements; Restoration).

"United States' Share" has the meaning set forth in Section I(G) (Recitals).

### **III. TERM; EFFECTIVENESS; PAYMENTS**

- A. The recitals set forth in Section I of this Amendment are incorporated into and made part of this Amendment.
- B. This Amendment shall be binding and effective upon all Parties when executed by the Navajo Nation and all of the Lessees, and after the expiration of thirty (30) days following Secretary Approval provided the Operating Agent on behalf of Lessees has not objected to any material deviations in the terms of Secretary Approval from the Parties' submission for Secretary Approval within such thirty (30) day period, with such date referred to herein as the "Effective Date". If the Operating Agent on behalf of the Lessees objects to the terms of Secretary Approval within the thirty (30) day period and the objection is not resolved to the satisfaction of all Parties prior to the earlier of (i) one

hundred eighty (180) days after the date of Secretary Approval, or (ii) the expiration of the Lease in accordance with its original term, then this Amendment shall terminate. Notwithstanding the foregoing, the Non-U.S. Participants commit to make all Payments due to the Navajo Nation prior to the Effective Date as provided for in this Amendment following execution by all Non-U.S. Participants.

- C. Subject to the modifications provided for in this Amendment, including without limitation the provisions of Sections IX (Termination; Termination of Payments) and XIV (Removal of Improvements; Restoration), Lessees hereby exercise their right and option as provided in Section 6 of the Lease to extend the term (the "Term") of the Lease from December 23, 2019 through December 22, 2044.
- D. If any transmission line located on 323 Grant premises has not been used for more than two (2) years after the effective date of the renewed or new 323 Grants, then the 323 Grant associated with that line will be deemed to expire pursuant to 25 CFR §169.20.
- E. Subject to the provisions of Section XIV (Removal of Improvements; Restoration), the 323 Grants for the Navajo Project shall be issued by the Secretary and extended through December 22, 2044.
- F. Notwithstanding anything in this Amendment to the contrary, Payments made under this Amendment by SRP, in its capacity as the Operating Agent, are conditioned upon the prior receipt of the funds from the Participants, as applicable, in accordance with the terms of the other Navajo Project agreements. All Payments to be made by the Lessees under this Amendment shall be paid to the Navajo Nation by SRP, as Operating Agent, except for tax payments required in the Lease. Such tax payments shall cease as provided in accordance with Section VI(B)(2) (Additional Payments). Upon receipt by SRP of Payments, SRP, as the Operating Agent, shall then make any payment required by the

terms of this Amendment to the Navajo Nation.

#### IV. SIGNING BONUS

If the Navajo Nation provides its final approval and execution of this Amendment and the Past Use Agreements as provided in subparagraphs A and B below, the Navajo Nation shall receive a signing bonus of one million dollars (\$1,000,000) (the "Signing Bonus"). The Past Use Agreements are the "230 kV Tie Line Settlement and Release Agreement" and the "Navajo Project Western Transmission System Settlement and Release Agreement" previously negotiated by the Parties. Final approval of the Amendment and the Past Use Agreements shall be deemed to have occurred when the following events and actions have been completed:

- A. Final approval for the Amendment means approval of documents that are mutually acceptable to the Parties, specifically including the Navajo Nation Council authorizing resolution, Amendment, and other attendant documents that require or imply a legal obligation for either Party. The Council must approve these documents on or before July 31, 2013 and the President of the Navajo Nation must execute the necessary documents on or before July 31, 2013.
- B. Final approval of the Past Use Agreements means approval of the "230 kV Tie Line Settlement and Release Agreement" and the "Navajo Project Western Transmission System Settlement and Release Agreement" that are mutually acceptable to the Parties. Appropriate officials and employees within the Navajo Nation Division of Natural Resources and the Navajo Nation Department of Justice must approve these agreements on or before July 31, 2013. The Navajo Nation Office of the Attorney General must execute these agreements on or before July 31, 2013.

If the conditions to the Signing Bonus set forth above are met, the Navajo Nation shall receive a signing bonus of one million dollars (\$1,000,000.00) (the "Signing Bonus"). If the conditions



to the Signing Bonus are met, SRP as the Operating Agent shall pay the Non-U.S. Participants' share or portion of the Signing Bonus in the amount of seven hundred fifty-seven thousand dollars (\$757,000.00) to the Navajo Nation within thirty (30) days of the Navajo Nation's execution of this Amendment. Upon Secretary Approval, SRP shall pay the portion of the Signing Bonus attributable to the United States' Share in the amount of two hundred forty-three thousand dollars (\$243,000.00) on the Effective Date. If the Navajo Nation is delayed or hindered in or prevented from the performance approval and execution of this Amendment by reasons of a Force Majeure Event, the Signing Bonus Deadline shall be extended for the period of the delay.

## V. LEASE PAYMENTS

### A. Consideration for Lease Payments

1. In consideration for the lease to Lessees of the Leased Lands and the 323 Grants listed in Exhibit 1 and Navajo Nation consent to the Secretary's issuance of the new or renewed 323 Grants, Lessees shall pay the Lease Payments, when the Parties have completed the necessary approvals, as set forth in this Amendment. The Parties recognize that the necessary approvals for the pre-2020 Non-U.S. Participants' Lease Payments do not include Secretary Approval.
2. The Parties acknowledge and agree that all Lease Payments in excess of Existing Lease Payments made on or before December 23, 2018 are in consideration for this Amendment and for the Navajo Nation's consent to the issuance or renewal of the 323 Grants by the Secretary.
3. Lessees will pay lease payments to the Navajo Nation annually in advance on or before December 23, the first day of the Lease Year to which the payment is

applicable (the "Lease Payment") as further provided below. Lease Payment will be paid to the Navajo Nation in a single payment.

B. Lease Payments Prior to Secretary Approval

1. For the Lease Year 2013, if the Navajo Nation provides final approval and executes this Amendment before December 23, 2013, the Non-U.S. Participants' 2013 Lease Year Lease Payment shall accrue in the amounts as provided below, which amounts depend on the date of execution of this Amendment by the Navajo Nation:

Date of Navajo Nation Execution of this Amendment	Lease Payment for Lease Year 2013
December 1, 2012 - April 30, 2013	\$6,369,090.00
May 1, 2013 - July 31, 2013	\$4,776,817.00
August 1, 2013 - October 31, 2013	\$3,184,545.00
November 1, 2013 - December 22, 2013	\$1,592,273.00
On or after December 23, 2013	\$0

If the Navajo Nation executes this Amendment on or after December 23, 2013, but prior to Secretary Approval, the Lease Payment by the Non-U.S. Participants in the amount of six million three hundred sixty-nine thousand ninety dollars (\$6,369,090.00) per Lease Year shall accrue beginning with the first December 23 following execution of this Amendment by the Navajo Nation and will continue until the earlier of: (a) December 23, 2018; or (b) the date when all of the Non-U.S. Participants have executed this Amendment (the "Lease Payment Accrual Period"). The Lease Payment accrued during the Lease Payment Accrual Period shall be paid by the Non-U.S. Participants to the Navajo Nation within thirty (30) days of the execution of this Amendment by all Non-U.S. Participants. Notwithstanding anything contained herein to the contrary, if this Amendment is not approved and executed by all of the Non-

U.S. Participants on or before December 22, 2018, then no accrued Lease Payments shall be due by the Non-U.S. Participants to the Navajo Nation.

2. During the Lease Payment Accrual Period, Lessees shall continue to pay to the Navajo Nation the annual lease rental of six hundred eight thousand four hundred dollars (\$608,400.00) as provided in Section 7 of the Lease (the "Existing Lease Payments"). SRP shall continue to pay to the Navajo Nation the portion of the Existing Lease Payment attributable to the United States' Share in the amount of one hundred forty-seven thousand eight hundred forty-one dollars and 20/100 (\$147,841.20) annually until the earlier of: (a) December 23, 2018; or (b) the Effective Date.

3. Beginning on the first December 23 following execution of this Amendment by the Navajo Nation and all Non-U.S. Participants, the Non-U.S. Participants shall make Lease Payments to the Navajo Nation in the amount of six million eight hundred twenty-nine thousand six hundred forty-eight and 84/100 dollars (\$6,829,648.84) per Lease Year and their obligation to pay their portion of the Existing Lease Payments and any other payments made for use of transmission corridors associated with the Navajo Project will end. The Lease Payment in the amount of six million eight hundred twenty-nine thousand six hundred forty-eight and 84/100 dollars (\$6,829,648.84) will continue until the earlier of: (a) December 23, 2018; or (b) the Effective Date.

C. Lease Payments After the Effective Date

1. Upon the Effective Date, Lessees will commence making Lease Payments to the Navajo Nation in the amount of nine million dollars (\$9,000,000.00) for the following Lease Year until terminated in accordance with Section IX

(Termination; Termination of Payments); provided, however, that such payments will not commence until the first December 23 following the Effective Date.

2. The Lease Payment payable after the Effective Date is based upon the total of 7,472 acres for the Navajo Project. If additional acreage for the Navajo Project is required, the Operating Agent shall commission a survey of the portion of land to be added to the Navajo Project to determine the exact acreage. For such additional acreage, if any, the Lease Payment shall be adjusted upward based on \$1,204 per additional acre escalated according to Section VIII (Payment Escalation), except as provided in Section XV.E.1 (Consent to Rights-of-Way and Easement).

D. Escalation of Lease Payments

All Lease Payments, other than Existing Lease Payments, to be made by any Lessee, whether prior to or after the Effective Date or during the Lease Payment Accrual Period, shall be escalated according to Section VIII (Payment Escalation).

## VI. ADDITIONAL PAYMENTS

- A. In consideration of the additional payments by Lessees (the "Additional Payments"), the amounts of which are described below, the entirety of Section 7(f) of the Lease and the following language from Section 7(e) of the Lease are deleted effective upon the Effective Date:

*"provided, however, that after thirty-five (35) years from the commencement of commercial operation of Unit 3 of the Navajo Generation Station, the foregoing covenants shall lapse as to taxation of the property of Lessees located on the Leased Lands, or located on Reservation Lands pursuant to the Related Rights, or located pursuant to the rights-of-way and easements referred to in Sections 5(a) and 5(b) hereof; provided that during the remainder of the term of the Lease, no property taxes*

*shall be levied by the Tribe on such property at a rate or in any amount, in relation to value, in excess of one-half (1/2) of the equivalent rate, in relation to value, of the aggregate property taxes levied or imposed by the State of Arizona or any political subdivision thereof, as the case may be, applicable to such property at that time."*

The remainder of the language in Section 7(e) of the Lease shall remain in full force and effect.

B. Additional Payments—Non-U.S. Participants—Prior to Lease Year 2020

1. Subject to Section VI(B)(2) below, upon execution of this Amendment by the Navajo Nation, the amount of one million eight hundred ninety-nine thousand six hundred seventy-two dollars (\$1,899,672.00) shall commence accruing per quarter payable to the Navajo Nation by the Non-U.S. Participants as the Additional Payment (the "Pre-2020 Additional Payment") as further provided below. If the Navajo Nation executes this Amendment on or before April 30, 2013, then the accrued amount of Pre- 2020 Additional Payment owed by the Non-U.S. Participants will be calculated quarterly beginning with the January 31, 2013 quarterly payment. If the Navajo Nation executes this Amendment on or after May 1, 2013, then the accrued amount of the Pre-2020 Additional Payment owed by the Non-U.S. Participants will be calculated beginning with the first quarterly due date following execution of this Amendment by the Navajo Nation. Quarterly payments will be accrued on January 31, April 30, July 31 and October 31 of each year until the earlier of: (a) the date that all of the Non-U.S. Participants execute this Amendment; or (b) October 31, 2019 (the "Additional Payment Accrual Period"). At the end of the Additional Payment Accrual Period, the Pre-2020 Additional Payment then accrued will be paid to the Navajo Nation

by the Non-U.S. Participants within thirty (30) days of the execution of this Amendment by all of the Non-U.S. Participants. Notwithstanding anything contained herein to the contrary, if this Amendment is not approved and executed by all of the Non-U.S. Participants on or before October 31, 2019, then no accrued Additional Payment shall be due by the Non-U.S. Participants to the Navajo Nation.

2. Until the Effective Date, the Lessees shall continue paying to the Navajo Nation their respective tax payments owed pursuant to the Lease and the Additional Payment amounts through October 31, 2019 shall be reduced by the amount of the tax payments made to the Navajo Nation by the Lessees. Upon the Effective Date, the obligation of Lessees to pay taxes pursuant to the Lease shall be prorated through the Effective Date and will thereafter cease.
3. Upon execution of this Amendment by the Navajo Nation and all Non-U.S. Participants, the Non-U.S. Participants will begin paying the Pre- 2020 Additional Payment in the amount of one million eight hundred ninety-nine thousand six hundred seventy-two dollars (\$1,899,672.00), minus any taxes paid after the previous quarterly payment, per quarter until the earlier of: (1) October 31, 2019, or (2) the date the Operating Agent gives a Notice of Cessation under Section IX (Termination; Termination of Payments) that NGS has ceased operation.

C. Prior to Lease Year 2020 Additional Payment—United States

If Secretary Approval is provided prior to October 2019, upon the Effective Date, SRP will begin making Additional Payments to the Navajo Nation attributable to the United States' Share in the amount of six hundred nine thousand eight hundred two dollars (\$609,802.00) per quarter until October 31, 2019.

D. Commencing Lease Year 2020 Additional Payments—Lessees

1. If the Effective Date occurs prior to December 23, 2019, and if the Operating Agent has not given a Notice of Cessation to the Navajo Nation pursuant to Section IX (Termination: Termination of Payments), Lessees shall pay the Additional Payment of thirty-four million dollars (\$34,000,000.00) per Lease Year in quarterly installments of eight million five hundred thousand dollars (\$8,500,000.00) to the Navajo Nation beginning on January 31, 2020. The quarterly payments will be due on January 31, April 30, July 31 and October 31 of each Lease Year and will continue through October 31, 2044, subject to the adjustment provision in Section VI(D)(2) below (relating to Net Capacity) and the termination provisions in Section IX (Termination: Termination of Payments).
2. If the Net Capacity is reduced from the existing Net Capacity of 2,250 MW by a cumulative amount of ten percent (10%) or more at any time prior to the expiration of the Term, the Additional Payments will be reduced by the total percentage of such reduction. If the Net Capacity of NGS is increased over the existing Net Capacity of 2,250 MW by a cumulative amount of by ten percent (10%) or more at any time prior to the expiration of the Term, the Additional Payments shall be increased by the total percentage of such increase. Thereafter, any future Net Capacity reduction or increase percentages will result in a proportionate decrease or increase in the Additional Payment.

E. Escalation of Additional Payments

All Additional Payments, to be made by any Lessee, whether or not prior to or after Lease Year 2020 or during the Additional Payment Accrual Period, shall be escalated according to Section VIII (Payment Escalation).

## VII. UNITED STATES SIGNING PAYMENT

Upon the Effective Date, SRP shall make an Initial Signing Payment to the Navajo Nation attributable to the United States' Share in the amount of one million dollars (\$1,000,000.00) (the "Initial Signing Payment"), which includes the United States' portion of any Signing Bonus and a portion of the Additional Payments. In addition, as set forth in the following sentence, SRP shall pay the Remainder Signing Payment to the Navajo Nation attributable to the United States' Share, the amount of which is dependent on the date the Navajo Nation executes this Amendment and the date of Secretary Approval, as set forth in Exhibit 3 attached hereto. In order to provide CAWCD, the operating agent for the Central Arizona Project, sufficient time to obtain financing, the Remainder Signing Payment shall be paid as soon as practicable, but no later than eighteen (18) months after the Effective Date. The Navajo Nation and SRP shall collaborate with CAWCD and the United States on efforts to minimize the time needed to pay the Remainder Signing Payment. The Initial Signing Payment and the Remainder Signing Payment are subject to escalation as provided in Section VIII (Payment Escalation) below.

## VIII. PAYMENT ESCALATION

A. The "Beginning Index" (BI) for all adjustment dates is the Consumer Price Index that is published for October, 2011. The "Extension Index" (EI) is the Consumer Price Index published for the October immediately preceding the then current adjustment date. The "Escalation Factor" (EF) for all adjustment dates is the increase in the Consumer Price Index as determined by dividing the Extension Index by the Beginning Index as shown in the following equation:

$$EF = EI/BI.$$

If the EF for any adjustment date is less than the EF of the previous year adjustment date, the EF of the previous year adjustment date is to be used for calculating the



adjusted payment. If the manner in which the Bureau of Labor Statistics determines the Consumer Price Index is materially revised, the Parties shall make an adjustment in the revised index which will produce a result equivalent, as nearly as possible, to that which would have been obtained if the Consumer Price Index had not been so revised. If the Consumer Price Index becomes unavailable to the public or if the equivalent data is not readily available to enable the Parties to make the calculations referred to herein, then there shall be substituted therefore a comparable index, reasonably acceptable to all Parties, based on the changes in the cost of living or purchasing power of the consumer dollar, published by an agency of the federal government, or in the absence thereof, by a nationally recognized financial reporting service.

B. At the end of any accrual period, the accrued amount is escalated using the immediately prior October CPI value for the Extension Index.

1. That portion of the accrued amount resulting from lease, community, or scholarship payments will be escalated according to the following equation:

$$\text{Escalated Payment} = (\text{accrued amount})(EF).$$

2. That portion of the accrued amount resulting from Additional Payments will be escalated according to the following equation:

$$\text{Escalated Payment} = (\text{accrued amount})(1 + 25\%(EF-1))$$

C. The escalated Lease Payment shall be calculated each Lease Year prior to the Lease Payment due date (each an "adjustment date") commencing with the first Lease Payment paid to the Navajo Nation, after the accrued Lease Payment amount has been paid, to an amount equal to \$9,000,000 multiplied by the Escalation Factor as shown in the following equation:

Escalated Lease Payment = \$9,000,000 X Escalation Factor.

D. The Additional Payment shall be escalated:

1. For the Additional Payments that were accrued during the Accrual Period, add all the Additional Payments accrued but not paid and multiply this value by one (1) plus twenty-five percent (25%) of the Escalation Factor minus one (1), as shown in the following equation:

Escalated Additional Payment = Accrued Additional Payment X (1 + 25%(EF-1))

Where the Extension Index is equal to the latest available October CPI value at the time the accrued payment is due.

2. For the Additional Payments that occur after the Accrual Period, but prior to the Effective Date, multiply the amount of one million eight hundred ninety-nine thousand six hundred seventy-two dollars (\$1,899,672.00) per quarter by one (1) plus twenty-five percent (25%) of the Escalation Factor minus one (1), as shown in the following equation:

Escalated Additional Payment = \$1,899,672 X (1 + 25%(EF-1))

Where the Extension Index is equal to the latest available October CPI value at the time the quarterly Additional Payment is due.

3. For the Additional Payments that occur after the Effective Date but prior to December 23, 2019, add the Additional Payments due by the Non-U.S. Lessees (\$1,899,672.00) to the amount attributable to the United States' Share (\$609,802.00) and then multiply that value (\$2,509,474) by one (1) plus twenty-five percent (25%) of the Escalation Factor minus one (1), as shown in the following equation:

Escalated Additional Payment = \$2,509,474 X (1 + 25%(EF-1))

Where the Extension Index is equal to the latest available October CPI value at the

time the quarterly Additional Payment is due.

4. For the Additional Payments that occur after December 22, 2019, multiply the amount of eight million five hundred thousand dollars (\$8,500,000.00) per quarter by one (1) plus twenty-five percent (25%) of the Escalation Factor minus one (1), as shown in the following equation:

$$\text{Escalated Additional Payment} = \$8,500,000 \times (1 + 25\%(\text{EF}-1))$$

Where the Extension Index is equal to the latest available October CPI value at the time the quarterly Additional Payment is due.

- E. The Initial Signing Payment shall be escalated at the time of payment (the "adjustment date") to an amount equal to:

$$\text{Initial Signing Payment} = (\$243,000)(\text{EF}) + (757,000(1 + 25\%(\text{EF}-1)))$$

The Remainder Signing Payment shall be escalated at the time of payment (the "adjustment date") to an amount equal to:

1. The portion of the Remainder Signing Payment that is determined pursuant to Exhibit 3 and annotated as "Lse Pmts (100%)" is multiplied by the Escalation Factor as shown in the following equation:

$$\begin{aligned} \text{Escalated Payment (attributable to Lease Payments)} &= \text{"Lse} \\ &\text{Pmts (100%)" Amount} \times \text{EF.} \end{aligned}$$

2. The portion of the Remainder Signing Payment that is determined pursuant to Exhibit 3 and annotated as "Addl Pmts (25%)" is multiplied by one (1) plus twenty-five percent (25%) of the Escalation Factor minus one (1), as shown in the following equation:

$$\begin{aligned} \text{Escalated Payment (attributable to Additional Payment)} &= \\ &\text{"Addl Pmts (25%)" Amount} \times (1 + 25\%(\text{EF}-1)). \end{aligned}$$

The two values calculated in subparagraph 1 and 2 above are added together and result in the "Remainder Signing Payment", which shall be paid according to Section VII (United States Signing Payment).

#### IX. TERMINATION; TERMINATION OF PAYMENTS

- A. Except in the case of a Force Majeure Event, if Lessees determine that they will cease operation of one or more units at NGS prior to the expiration of the Term, the Operating Agent shall provide preliminary written notice ("Notice of Planned Cessation") to the Navajo Nation at least two (2) years prior to the permanent cessation of commercial operation of such unit(s) or NGS. For ninety (90) days after providing the Navajo Nation a Notice of Planned Cessation, Lessees shall consider proposals by the Navajo Nation for modified terms and conditions of the Lease to provide for continued commercial operations at NGS. If the Navajo Nation is not a Participant at the time of the Notice of Planned Cessation, Lessees shall provide the Navajo Nation data and other information that Lessees collectively are utilizing to make the determination to cease commercial operation of NGS, so long as the Navajo Nation enters into a mutually acceptable non-disclosure agreement to govern the disclosure of such data and information. Individual Participants and the United States are not required to provide proprietary data and other information to the Navajo Nation that they would otherwise not share with the other Participants. Any time following the end of the ninety (90) day period, the Operating Agent shall provide written notice to the Navajo Nation of Lessees' final decision regarding cessation or continuation of commercial operation at NGS (the "Notice of Decision"). Nothing contained in this Section or in this Amendment shall be deemed to create any obligation by Lessees to accept any proposals by the Navajo Nation or any obligation by the Navajo Nation to provide a

- proposal for the continued operation of the Navajo Project.
- B. The Operating Agent shall provide written notice to the Navajo Nation upon cessation of commercial operations at NGS (the "Notice of Cessation"). Upon compliance with provision of all applicable notices, Lessees may terminate the Lease at any time prior to the expiration of the Term by providing written notice of Lease termination to the Navajo Nation (the "Notice of Lease Termination"). The Notice of Lease Termination shall state the planned date for termination of the Lease, upon which date the terms of Section XIV (Removal of Improvements; Restoration) are applicable.
- C. If some or all of the Participants owning interests in the Navajo Western or Navajo Southern transmission systems of the Navajo Project wish to continue the operation and use of either or both transmission systems ("Continued Transmission System Participants") after a Notice of Decision to cease commercial operation of NGS has been sent, the Continued Transmission System Participants shall provide written notice of such intent to the Navajo Nation. The Continued Transmission System Participants and the Navajo Nation shall negotiate in good faith for new terms and conditions to support the continued operation of the transmission systems or portion thereof.
- D. Lessee's are obligated to continue making Payments, once started, until that obligation is terminated as follows: (1) Lessee's obligation to pay Additional Payments to the Navajo Nation shall immediately terminate upon the provision of the Notice of Cessation; (2) Lessee's obligation to pay the Lease Payments, payments to the Chapter Fund and payments to the Scholarship Fund shall terminate on the earlier of (a) the date of completion of removal of improvements and restoration of the Leased Lands and 323

Grants premises in accordance with Section XIV (Removal of Improvements; Restoration), or (b) December 23, 2044.

- E. This Section shall survive the termination or expiration of the Lease.

#### **X. REVOCATION OF AMENDMENT**

- A. On and after the date that the Navajo Nation approves and executes this Amendment, the Navajo Nation agrees not to revoke its approval and execution of this Amendment or its consent to any of the 323 Grants listed in Exhibits 1 and 2; provided, however, that the following provisions shall apply if the Navajo Nation breaches this provision:
1. If the Navajo Nation revokes its approval and execution of this Amendment or its consent to any of the listed 323 Grants before all of the Non-U.S. Participants have executed this Amendment, the Non-U.S. Participants shall not be required to pay any Payments, accrued or otherwise, provided for in this Amendment.
  2. If the Navajo Nation revokes its approval and execution of this Amendment or its consent to any of the listed 323 Grants after execution of this Amendment by all Non-U.S. Participants but prior to the Effective Date, the Navajo Nation shall, within thirty (30) days of such revocation, refund to the Non-U.S. Participants all Payments that the Non-U.S. Participants have paid pursuant to this Amendment prior to such revocation, less the amount that would have been paid under the Lease. This refund obligation shall survive the revocation of approval of this Amendment by the Navajo Nation.
- B. Prior to the Effective Date, the Non-U.S. Participants may revoke their approval of this Amendment by written notice to the Navajo Nation (a "Revocation Notice"), whereupon this Amendment shall become null and void. If the Non-U.S. Participants revoke their execution of this Amendment prior to the Effective Date, the Navajo Nation shall be permitted to retain all Payments made prior to the Revocation Notice by the Non-U.S. Participants pursuant to this Amendment.

- C. On and after the Effective Date, this Amendment and the Lease may be terminated only as provided in Section IX of this Amendment.

#### **XI. NAVAJO NATION OWNERSHIP OF THE NAVAJO PROJECT**

- A. If, with the consent of the Participants, SRP or any other current Lessee and LADWP agree to and complete the purchase and sale of all or a portion of LADWP's ownership interest in the Navajo Project prior to December 23, 2019, the Navajo Nation, acting on its own behalf or through an enterprise or authority designated by the Navajo Nation, shall have the option (the "Navajo Nation Purchase Option") to acquire an ownership interest of up to 170 MWs in the Navajo Project of the share of LAWDP acquired by SRP or any other current Lessee (the "Navajo Nation Interest"). The Navajo Nation Interest shall include a share of the transmission rights purchased by SRP or any other current Lessee, where such share is determined by dividing the MWs of the Navajo Nation Interest by the MWs SRP or any other current Lessee acquires from LADWP. The Navajo Nation Purchase Option may be exercised by the Navajo Nation following the date that LADWP's ownership interest is transferred to SRP or any other current Lessee in accordance with the same terms, conditions and procedures in effect for ownership interest transfers between the Lessees at the time of the transfer of any portion of the LAWDP ownership to other Lessees. Future agreements, including but not limited to the Navajo Project Co-Tenancy Agreement modifications, for Navajo Nation direct ownership in the Navajo Project are required to be mutually acceptable by the parties to the agreement, including existing Participant release of liability for the seller.
- B. If the Navajo Nation elects to exercise the Navajo Nation Purchase Option, the transfer of ownership shall occur in two phases. Separate phases are necessary to address requirements and options pre- and post-Effective Date. Future agreements for either the

"virtual ownership" or the "direct ownership" phases described below must be mutually acceptable to the applicable parties thereto.

1. The first phase shall be a "virtual ownership" agreement that provides an ownership-like cost/benefit structure. In this phase, the Navajo Nation shall pay its share of the total Navajo Project costs that serve as the basis for charges to the other Participants and would receive the applicable MWs of capacity it will be purchasing or its respective percentage of output during unit curtailments or outages. Delivered energy would be subject to the same operational risks as any other Participant.

2. Upon the receipt of all regulatory, board and other approvals of the transfer of the acquired interest required by any Participant or the Navajo Nation, including any required Secretary Approval, the Navajo Nation may convert the "virtual ownership" into "direct ownership" of the Navajo Nation Interest. If the Navajo Nation elects to convert its "virtual ownership" interest into "direct ownership", the purchased interest shall be subject to the same Navajo Project agreements' requirements as any other Participant, including existing Participant release of liability for the seller. Each existing Participant must approve the release of the seller(s) and obtaining the release would be a condition of closing the Navajo Nation Interest. Upon the transfer of the ownership interest in the Navajo Project to the Navajo Nation, the Navajo Nation shall assume all the rights and responsibilities of Navajo Project ownership as provided in the various Navajo Project agreements then in effect.

C. If the Navajo Nation elects not to exercise the Navajo Nation Purchase Option, then the Lessees shall provide the Navajo Nation, acting on its own behalf or through an



enterprise or authority designated by the Navajo Nation, a right of first refusal option (the "Navajo Nation Right of First Refusal Option") to purchase any proposed Navajo Project ownership interest for sale by any Lessee on substantially the same terms and conditions as a proposed sale that occurs on or after the Effective Date of this Amendment. If a Lessee proposes to sell all or a portion of its ownership interest in the Navajo Project, other than the portion SRP owns for the use and benefit of the United States, such Lessee shall provide written notice to the Navajo Nation thereof stating the terms and conditions on which it intends to sell such ownership interest. The exercise of the Navajo Nation Right of First Refusal Option and subsequent transfer of the proposed Navajo Project ownership interest shall be in accordance with the same terms, conditions and procedures then in effect for ownership interest transfers between the Lessees. For purposes of exercising the Navajo Nation Right of First Refusal Option, the Navajo Nation shall be given an ownership proxy of NGS of 7.5%. Future agreements that will be made for direct ownership are required to be mutually acceptable by the parties to the agreement, including existing Participant release of liability for the seller.

- D. The Participants shall provide the Navajo Nation, pursuant to an executed non-disclosure agreement, data and other information regarding NGS costs and operations necessary to help the Navajo Nation decide whether to exercise the Navajo Nation Purchase Option or Navajo Nation Right of First Refusal Option. Individual Participants and the United States are not required to provide proprietary data and other information to the Navajo Nation that they would otherwise not share with the other Participants.

## **XII. COMPLIANCE WITH AND ADDITIONAL AMENDMENTS TO THE LEASE; FUTURE COOPERATION TO RESOLVE ISSUES**

- A. Except as specifically modified by this Amendment, all of the terms and conditions of the Lease shall remain in full force and effect. In the event of any conflict between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall govern and control. The provisions of this Section XII shall survive the expiration or termination of the Lease and 323 Grants.
- B. Without limiting the foregoing, the provisions in Section 16 of the Lease addressing "Operation of Navajo Generating Station" shall remain effective through the date the removal of the improvements and restoration of the Reservation Lands as set forth in Section XIV (Removal of Improvements; Restoration) is completed.
- C. Section 10 of the Lease is amended to delete subsections (a), (b) and (c) such that Section 10 of the Lease shall now read as follows:
- The Lessees shall comply with all air pollution laws and regulations under federal or state laws now or hereafter in force.*
- D. Section 18 of the Lease is deleted in its entirety and replaced with the following language:
- Employment at the Navajo Generating Station will be based on qualifications without regard to race, color, creed, religion, national origin, disability, sex, or age, except that to the extent allowed by law preference will be given to qualified Navajos. Navajo Generating Station also will give preference to qualified Navajos in selection for apprenticeship program openings to the extent allowed by law. The Parties recognize that in certain circumstances the need for critical or specialized skills at the Navajo Generating Station will require selecting the most qualified person whether or not they are Navajo. In the event that federal law prohibits Lessees from providing employment preference based on tribal affiliation, Lessees will follow Indian*

*preference, as described in this agreement.*

- E. Section 28 of the Lease is amended to delete subsections (a) and (b) such that Section 28 of the Lease shall now read as follows:

*The Lessees shall comply with all water pollution control laws and regulations under federal, state or county jurisdiction, now or hereafter in force.*

- F. Section 36 of the Lease is deleted in its entirety.
- G. The Parties agree to use commercially reasonable efforts to resolve issues that arise during the Term, including, but not limited to, the use of Voluntary Compliance Agreements.
- H. The last sentence of Section 12(e) of the Lease is amended to read as follows:

*Lessees agree to build such dikes and ditches to maintain the ash within the Ash Disposal Area and Lessees shall cover to a thickness of twelve (12) inches, unless federal requirements mandate a greater degree of thickness, of earth any areas containing ash and seed such earth cover in order to prevent wind and water erosion.*

- I. Exhibit 9, List of Permanent Structures, to the Indenture of Lease is amended to add the following at the ending of the existing list of structures:

*Lake Pump Station and two 30-inch water delivery pipes between the Lake Pump Station and the Metering Pit located at the Plant Site.*

### **XIII. ASSIGNMENTS**

- A. The Parties hereby amend the provisions of Section 13 of the Lease to add the following to the existing circumstances in which each Lessee may transfer or assign its rights and interests in the Lease without need for consent of the Navajo Nation or the Secretary at any time:

1. to the Navajo Nation, its enterprises and authorities; or

2. to an Affiliate.

- B. Except as provided in Section 13 of the Lease, as amended by this Amendment, all other assignments shall be subject to the prior written consent of the Navajo Nation, which consent shall not be unreasonably withheld or delayed, prior to approval by the Secretary. The Navajo Nation shall not charge any fee for reviewing a requested assignment except for routine administrative processing fees.
- C. Within thirty (30) days of any assignment permitted without Navajo Nation consent in the Lease, as amended by this Amendment, the assignor Lessee will provide the Navajo Nation with written notice indicating the parties to the assignment, date of assignment and relationship between the assignor and assignee.

#### **XIV. REMOVAL OF IMPROVEMENTS; RESTORATION**

- A. Upon the provision of a Notice of Lease Termination by the Lessees, or other termination or expiration of the Lease, the removal and restoration of the Leased Lands shall be in accordance with the provisions of Section 12 of the Lease, provided that removal and restoration shall be limited to those actions required by Section 12 of the Lease and the applicable laws and regulations of the United States in force at the time of decommissioning of the Navajo Project.
- B. The Navajo Nation acknowledges and agrees that the removal of improvements and restoration of the 323 Grants premises shall be completed in accordance with and limited to those actions required by the 323 Grants and the applicable laws and regulations of the United States, provided such removal and restoration activities shall be completed no later than December 23, 2045, subject to Sections XIV(D) and (E) below.
- C. If the removal of improvements and restoration of Leased Lands and the 323 Grants premises extends beyond the expiration of the Term of the Lease, Lessees shall have

until December 23, 2045 to complete removal of improvements and restoration of the Leased Lands and 323 Grants premises. In consideration of the foregoing, Lessees shall continue to pay the Lease Payments, Local Community Involvement Payments and Scholarship Payments until the earlier of (1) the date of completion of removal of improvements and restoration of the Leased Lands and 323 Grants premises, or (2) December 23, 2044.

- D. If Lessees determine that they cannot complete removal and restoration on the Leased Lands and 323 Grants by December 23, 2045, Lessees and the Navajo Nation shall commence good faith negotiations for compensation, to be paid to the Navajo Nation for prospective periods of occupation, use or burden of the Leased Lands and 323 Grants.
- E. Lessees shall provide written notice to the Navajo Nation at least eighteen (18) months prior to the planned start of removal of any transmission facilities (the "Transmission Facility Removal Notice").
1. Within thirty (30) days of receipt of a Transmission Facility Removal Notice, the Navajo Nation may request in writing that Lessees provide the Navajo Nation, at Lessees' sole cost and expense, a Phase I Environmental Site Assessment (the "Phase I ESA") of the affected 323 Grant(s) consistent with ASTM E1527 and U.S. Environmental Protection Agency's All Appropriate Inquiry rule.
  2. Lessees shall provide the Phase I ESA to the Navajo Nation within six (6) months of the Navajo Nation's request to provide a Phase I ESA.
  3. Within six (6) months of the delivery of the Phase I ESA to the Navajo Nation, the Navajo Nation shall provide written notice to Lessees that

Lessees (a) should proceed with removal and restoration of the transmission facilities associated with the 323 Grant(s), or (b) should instead transfer ownership to the Navajo Nation of all or any specifically identified improvements then existing on the right of way associated with the 323 Grants. In the event no notice is given, the Navajo Nation shall be deemed to have notified Lessees to proceed with removal of the transmission facilities and restoration of the property with the 323 Grant(s).

4. If the Navajo Nation provides, or is deemed to have provided, notice to Lessees that removal of the transmission improvements and restoration of the associated 323 Grants is required, Lessees shall complete removal and restoration as set forth in this Section XIV (Removal of Improvements; Restoration).

- F. If Lessees are required to conduct post-closure monitoring or similar activities on the Reservation Lands, the Navajo Nation shall provide access to Lessees and their contractors for such activities at no cost to Lessees and their contractors except for nominal administrative processing fees.
- G. The provisions of this Section shall survive the expiration or termination of the Lease and 323 Grants.

#### **XV. CONSENT TO GRANTS OF RIGHT-OF-WAY AND EASEMENT**

- A. The Navajo Nation hereby provides its consent to the issuance or extension by the Secretary of all 323 Grants required by the Navajo Project and associated facilities, including the transmission system, listed on Exhibits 1 and 2 attached hereto, through December 22, 2044 and as provided in Section XIV (Removal of Improvements; Restoration). The Navajo Nation hereby consents to the inclusion of the following language in all 323 Grants required by the Navajo Project and associated facilities,

including the transmission system in substantially the form stated below:

*"All facilities, structures, improvements, equipment and property (other than nonremovable buildings) of whatever kind and nature constructed, placed or affixed by the grantees of the 323 Grants on the granted lands pursuant to rights acquired by the grant of rights-of-way, expressly including but not being limited to the Navajo Generating Station, all facilities and structures used therewith and related thereto, all rail transportation facilities, transmission facilities and the related switchyards therefor (hereinafter called "removable property"), as against the United States, the Secretary, the Navajo Nation and all other parties and persons whomsoever (including without limitation any party acquiring any interest in the granted lands or any interest in or lien, claim or encumbrance against any of such facilities, structures, improvements, equipment and property of whatever kind and nature), shall be deemed to be and remain personal property of the grantees of the 323 Grants, not affixed to the realty, and, subject to Section XIV(E) of the Lease Amendment No. 1, removable by the grantees of the 323 Grant at any time prior to or within twenty-four (24) months after expiration or earlier termination for any reason of the §323 grant. Subject to Section XIV(B) of the Lease Amendment No. 1, the grantees of the 323 Grants may remove, at or prior to twenty-four (24) months following the expiration or earlier termination of the §323 grant, all removable property except as set forth in the Lease and any amendments to the Lease."*

- B. The Navajo Nation agrees to cooperate with Lessees to complete all necessary federal and state environmental reviews and obtain all necessary regulatory approvals, and shall support Lessees and the Navajo Project in any National Environmental Policy Act or other similar impact analysis with the Department of Interior, other federal or state

agencies or the Navajo Nation. In no event shall the Navajo Nation take a position with the Department of Interior or other agency that is adverse to Lessees with respect to the approval of this Amendment or the issuance of the listed 323 Grants. The foregoing is not intended to preclude the Navajo Nation or any person from participating in or commenting on any necessary environmental reviews.

- C. It is the Parties' intention that the Navajo Project and the Four Corners Project have all 323 Grants necessary to operate in the event one of the plants ceases operation. The Parties acknowledge and consent to the required transfers of then- existing transmission 323 Grants.
- D. The Navajo Nation acknowledges and agrees that the users of the Moenkopi Switchyard shall continue to own and operate those assets for the benefit of either or both the Navajo Southern Transmission System and the Moenkopi – Eldorado Transmission Line even if there is a partial decommissioning of either transmission system or if there is a need to transfer the facilities between such users.
- E. The Navajo Nation hereby consents to the inclusion of terms in the new or renewed 323 Grants required by either the Four Corners Project or the Navajo Project that will provide a right to transfer 323 Grants or facilities listed in Section XV(E)(1) and XV(E)(2) below between the Participants and the participants in the Four Corners Project ("Four Corners Participants") without further approval by either the Secretary or the Navajo Nation in the following instances:
  - 1. In the event the Four Corners Project permanently ceases to operate and the Navajo Project continues to operate, the Navajo Nation agrees that the Four Corners Participants may transfer to the Participants all of the facilities in the Moenkopi Switchyard and the portion of the 500 kV Eldorado transmission line



west from the Moenkopi Switchyard to the western boundary of the Navajo Nation (the "Moenkopi-Eldorado Transmission Line"), notwithstanding any provision otherwise in Amendment and Supplement No. 2 and Amendment and Supplement No. 3 to Supplemental and Additional Indenture of Lease between the Navajo Nation and the Four Corners Participants (the "Four Corners Lease Amendment"). Upon transfer of the Moenkopi Switchyard and Moenkopi-Eldorado Transmission Line facilities, as provided in this Section, the Lease Payment will be adjusted upward by an amount equal to \$1,600.00 per acre escalated according to Section VIII(C) (Payment Escalation) multiplied by the number of acres included in the 323 Grants for the Moenkopi Switchyard and the Moenkopi-Eldorado Transmission Line set forth in Exhibit 2 attached hereto.

2. In the event the Navajo Project permanently ceases to operate and the Four Corners Project continues to operate, the Participants in the Navajo Project, upon agreement by the Four Corners Participants to grant access to the Navajo Nation to such 323 Grants and facilities on the 323 Grant according to applicable FERC rules then in effect, may transfer the 323 Grant and facilities for the Navajo Southern Transmission System from one mile east of the Moenkopi Switchyard to the southern border of the Navajo Nation to the Four Corners Participants. The 323 Grant shall expire on July 6, 2041 or upon the Four Corners Project permanently ceasing operations, whichever occurs earlier. The 323 Grant for this portion of the line will include a condition that any transfer of the 323 Grant to the Four Corners Participants will include an annual payment of \$1600 per acre escalated according to Section VIII (Payment Escalation) multiplied by the number of acres included in the 323 Grants for

the Navajo Southern Transmission System from one mile east of the Moenkopi Switchyard to the southern border of the Navajo Nation.

3. Upon expiration of the 323 Grants transferred between the Four Corners Participants and the Participants pursuant to Sections XV(E)(1) and XV(E)(2) above, the removal of improvements or transfer of facilities located within the 323 Grants shall occur in conformity with the applicable lease, as amended, for the last operating plant (either NGS or Four Corners Project) and the then-applicable 323 Grant.
4. In consideration for the Navajo Nation's consent to the terms and conditions of this Section XV, the Navajo Nation shall have the right, subject to applicable FERC rules then in effect, to access the lines and switchyard(s) located on any 323 Grant that is transferred as a result of this Section, and which are associated with the Navajo Project for the purpose of transmitting electricity generated from projects sited on Navajo Nation lands or projects in which the Navajo Nation has an ownership interest.

#### **XVI. LOCAL COMMUNITY INVOLVEMENT**

- A. Upon the execution of this Amendment by the Non-U.S. Participants, a fund (the "Chapter Fund") shall be created and administered by Lessees for the benefit of the NGS Community Chapters. Upon execution of this Amendment by the Navajo Nation, 75.7% of two percent (2%) of nine million dollars (\$9,000,000.00) (which is \$136,260.00) shall begin to accrue during the Lease Payment Accrual Period. The accrued proceeds shall be escalated according to Section VIII(B) (Payment Escalation) and paid into the Chapter Fund within thirty (30) days after the date that the Navajo Nation and all Non-U.S. Participants execute this Amendment.

Notwithstanding anything contained herein to the contrary, if this Amendment is not approved and executed by all of the Non-U.S. Participants on or before December 23, 2018, then no accrued Non-U.S. Participant portion of the Lease Payments intended for the Chapter Fund shall be due and owing by the Non-U.S. Participants to the Navajo Nation.

- B. After the Navajo Nation and all Non-U.S. Participants have executed this Amendment, SRP shall pay an amount equal to 75.7% of two percent (2%) of the then current Lease Payment into the Chapter Fund each Lease Year at the time of payment of the Lease Payment until the earlier of: (1) December 23, 2018; or (2) the Effective Date.
- C. If and when SRP pays the Remaining Signing Payment amount described in Section VII (United States Signing Payment) that portion of the payment that is attributable to the Chapter Fund for periods prior to the Effective Date shall be paid into the Chapter Fund. If and when the Effective Date occurs, SRP shall pay an amount equal to two percent (2%) of the then current Lease Payment into the Chapter Fund each Lease Year at the time of payment of the Lease Payment until termination of the Lease and compliance with Section XIV (Removal of Improvements; Restoration) by the Lessees.

## **XVII. SCHOLARSHIP**

- A. Upon the execution of this Amendment by the Non-U.S. Participants, a fund (the "Scholarship Fund") shall be created and administered in cooperation with Lessees by the Office of Navajo Nation Scholarship and Financial Assistance for the use of awarding scholarships and financial assistance to eligible applicants ("Navajo Generating Station Scholarships"). Upon execution of this Amendment by the Navajo Nation, 75.7% of 2.78% of nine million dollars (\$9,000,000.00) (which is

\$189,401.40) shall begin to accrue during the Lease Payment Accrual Period. The accrued proceeds shall be escalated according to Section VIII(B) (Payment Escalation) and paid into the Scholarship Fund within thirty (30) days after the date that the Navajo Nation and all Non-U.S. Participants execute this Amendment. Notwithstanding anything contained herein to the contrary, if this Amendment is not approved and executed by all of the Non-U.S. Participants on or before December 23, 2018, then no accrued Non-U.S. Participant portion of the Lease Payments intended for the Scholarship Fund shall be due and owing by the Non-U.S. Participants to the Navajo Nation.

- B. After the Navajo Nation and all Non-U.S. Participants have executed this Amendment, SRP shall pay an amount equal to 75.7% of 2.78% of the then current Lease Payment into the Scholarship Fund each Lease Year at the time of payment of the Lease Payment until the earlier of: (1) December 23, 2018; or (2) the Effective Date.
- C. If and when SRP pays the Remaining Signing Payment amount described in Section VII (United States Signing Payment), that portion of the payment that is attributable to the Scholarship Fund for periods prior to the Effective Date shall be paid into the Scholarship Fund.
- D. If and when the Effective Date occurs, SRP shall pay an amount equal to 2.78% of the then current Lease Payment into the Chapter Fund each Lease Year at the time of payment of the Lease Payment until the termination of the Lease and compliance with Section XIV (Removal of Improvements; Restoration) by the Lessees.
- E. The amounts paid into the Scholarship Fund pursuant to this Section are in addition to the scholarship amounts paid by NGS through Peabody Western Coal Company.

#### **XVIII. NO THIRD PARTY BENEFICIARIES**

No Persons other than the Parties and the successors and assigns of such Parties, shall have any rights, privileges, waivers, obligations or remedies whatsoever under the Lease or this Amendment.

**XIX. APPROVAL UNDER 25 USC §415(a)**

The Parties acknowledge and agree that this Amendment shall not be effective until approved by the Secretary in accordance with Title 25, United States Code Section 415(a).

**XX. COUNTERPARTS**

This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

**XXI. EFFECT OF AMENDMENT**

Except as specifically modified by this Amendment, all of the terms and conditions of the Lease remain in full force and effect. In the event of any conflict between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall govern and control.

**XXII. INCORPORATION OF PRIOR AGREEMENTS**

This Amendment and the Lease contain the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior or other written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.

**XXIII. MODIFICATION OF AMENDMENT**

This Amendment may not be modified, nor may any right or obligation hereunder be waived orally, and no such amendment or modification shall be effective for any purpose unless it is in writing and signed by all Parties and approved as required by the United States.

**XXIV. SEVERABILITY OF PROVISIONS**

If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of such law, though not

expressly prohibited, or against public policy, or shall for any reason whatsoever be invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

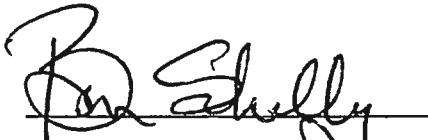
#### **XXV. AUTHORITY**

All Non-U.S. Participants (excluding SRP on behalf of the U.S. prior to receipt of Secretary Approval) have the legal authority to, and are not prohibited by law, from executing this Amendment; provided, however, that the effectiveness of this Amendment shall be subject to Secretary Approval and the provisions of Section X (Revocation of Amendment).

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be signed in their behalf by their duly authorized officers as of the date first above set out.

THE NAVAJO NATION

By: 

Name: Ben Shelly

Title: President

ARIZONA PUBLIC SERVICE COMPANY

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

Name: \_\_\_\_\_

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

Attest: \_\_\_\_\_

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

DEPARTMENT OF WATER AND POWER OF  
THE CITY OF LOS ANGELES

By: The Board of Water and Power Commissioners

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

Name: \_\_\_\_\_

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

Attest: \_\_\_\_\_

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

NV ENERGY

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

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

SALT RIVER PROJECT  
AGRICULTURAL IMPROVEMENT AND  
POWER DISTRICT,  
FOR THE USE AND BENEFIT OF SRP

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

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

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

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



TUCSON ELECTRIC POWER  
COMPANY

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

Name: \_\_\_\_\_

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

Attest: \_\_\_\_\_

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

SALT RIVER PROJECT AGRICULTURAL  
IMPROVEMENT AND POWER DISTRICT,  
FOR THE USE AND BENEFIT OF THE  
UNITED STATES

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

Name: \_\_\_\_\_

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

Attest: \_\_\_\_\_

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

Approval of this Amendment is hereby given pursuant to Title 25, United States Code Section 415(a) and consent is hereby given to SRP to execute the Amendment for the use and benefit of the United States:

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

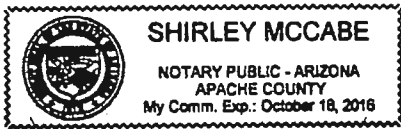
Name: \_\_\_\_\_

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

ACKNOWLEDGEMENTS

STATE OF ARIZONA )  
County of APACHE ) ss.

The foregoing instrument was acknowledged before me this 30 day of JULY,  
          , by BEN SHELLY, the PRESIDENT of the  
Navajo Tribal Council of The Navajo Nation, on behalf of The Navajo Nation.



*Shirley McCabe*  
Notary Public

My commission expires:

10-18-16

STATE OF ARIZONA )  
County of \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the  
ARIZONA PUBLIC SERVICE COMPANY, a corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

SHIRLEY MCCABE  
NOTARY PUBLIC - ARIZONA  
APACHE COUNTY  
My Comm. Exp. October 18 2018



STATE OF CALIFORNIA            )  
  ) ss.  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of THE  
BOARD OF WATER & POWER COMMISSION OF THE DEPARTMENT OF WATER AND  
POWER OF THE CITY OF LOS ANGELES, a department organized and existing under the  
Charter of the City of Los Angeles, a municipal corporation of the State of California, on behalf  
of said corporation.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

STATE OF NEVADA            )  
  ) ss.  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of NV  
ENERGY, a Nevada corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

STATE OF ARIZONA )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the  
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an  
Arizona agricultural improvement district, on behalf of said district.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

STATE OF ARIZONA )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the  
TUCSON ELECTRIC POWER COMPANY, an Arizona corporation, on behalf of said  
corporation.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

STATE OF ARIZONA                    )  
  ) ss.  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the  
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an  
Arizona agricultural improvement district, on for the use and benefit of the United States.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

EXHIBIT 1

323 GRANTS

323 Grant Description	Acres
Plant Site	1,020.13
Ash Disposal Site	764.87
Road between Plant site and Ash Disposal	30.19
Lake Pump Station	4.47
Road between Pump Station and N228	3.13
Piping and Road between Plant and Lake Pump	40.06
Power Line to Lake Pump	9.06
Coal conveyor from mine to Loading station	66.32
Coal Loading station near the Mine	99.88
Railroad Path	1,520.47
Western Transmission System	41.22
Southern Transmission System	3,862.579
230KV Tie Line	1.0239
Preston Mesa Communications Site	0.22
Zilnez Mesa Communication Site	2.37
Total	7,466*
* Note: The Lease Payment of \$9,000,000.00 per Lease Year is for the entire Navajo Project and includes 323 Grants for up to and including 7,472 acres.	

EXHIBIT 2

Moenkopi-Eldorado Switchyard and Transmission Line 323 Grants

ROW Description	Acres
Moenkopi Switchyard*	25
Moenkopi – Eldorado Transmission Line*	327.27
Total	352.27

\*Payment for these 323 Grants will not begin until the Four Corners Participants transfer the facilities on these 323 Grants to the NGS Participants and will be made in accordance with Section XV(E)(a). (Consent to Grants of Right-Of-Way and Easement).



**EXHIBIT 3**

**United States Remainder Signing Payment**

Upon the Effective Date of the Amendment, SRP shall pay the Navajo Nation the Initial Signing Payment (which is \$1,000,000.00) escalated according to Section VIII (Payment Escalation). The Remainder Signing Payment will be escalated and paid as soon as possible but no later than 18 months after the Effective Date. SRP and the Navajo Nation will collaborate with the USBR and the CAWCD on efforts to minimize the time needed to make the Remainder Signing Payment.

See Exhibit 3-(cont.) for an example of the escalation calculation of the Remainder Signing Payment.

(Only the amount listed below the date of Navajo Nation approval and across from the Effective Date is paid. The amounts shown are not additive and are not escalated)

Effective Date		Date Approved by Navajo Nation					
		Jan-Apr-2013	May-Jul-2013	Aug-Oct-2013	Nov-Dec-2013	Jan-2014	Feb-Apr-2014
Dec-24 2015 - Jan 2016	Remainder Signing Pmt	\$ 15,068,821	\$ 13,280,494	\$ 11,858,969	\$ 10,680,444	\$ 7,984,673	\$ 7,374,871
	Addl Pmts (25%)	\$ 6,560,626	\$ 5,341,022	\$ 4,731,220	\$ 4,121,418	\$ 4,121,418	\$ 3,511,615
	Lse Pmts (100%)	\$ 8,508,194	\$ 7,939,472	\$ 7,127,749	\$ 6,559,027	\$ 3,863,256	\$ 3,863,256
Feb - Apr 2016	Remainder Signing Pmt	\$ 15,678,623	\$ 13,890,296	\$ 12,463,771	\$ 11,290,247	\$ 8,594,476	\$ 7,984,673
	Addl Pmts (25%)	\$ 7,170,428	\$ 5,950,824	\$ 5,341,022	\$ 4,731,220	\$ 4,731,220	\$ 4,121,418
	Lse Pmts (100%)	\$ 8,508,194	\$ 7,939,472	\$ 7,127,749	\$ 6,559,027	\$ 3,863,256	\$ 3,863,256
May - Jul 2016	Remainder Signing Pmt	\$ 16,288,425	\$ 14,500,098	\$ 13,078,573	\$ 11,900,049	\$ 9,204,278	\$ 8,594,476
	Addl Pmts (25%)	\$ 7,780,231	\$ 6,560,626	\$ 5,950,824	\$ 5,341,022	\$ 5,341,022	\$ 4,731,220
	Lse Pmts (100%)	\$ 8,508,194	\$ 7,939,472	\$ 7,127,749	\$ 6,559,027	\$ 3,863,256	\$ 3,863,256
Aug - Oct 2016	Remainder Signing Pmt	\$ 16,898,227	\$ 15,109,900	\$ 13,688,376	\$ 12,509,851	\$ 9,814,080	\$ 9,204,278
	Addl Pmts (25%)	\$ 8,390,033	\$ 7,170,428	\$ 6,560,626	\$ 5,950,824	\$ 5,950,824	\$ 5,341,022
	Lse Pmts (100%)	\$ 8,508,194	\$ 7,939,472	\$ 7,127,749	\$ 6,559,027	\$ 3,863,256	\$ 3,863,256
Nov - Dec 23 2016	Remainder Signing Pmt	\$ 17,508,029	\$ 15,719,703	\$ 14,298,178	\$ 13,119,653	\$ 10,423,882	\$ 9,814,080
	Addl Pmts (25%)	\$ 8,999,835	\$ 7,780,231	\$ 7,170,428	\$ 6,560,626	\$ 6,560,626	\$ 5,950,824
	Lse Pmts (100%)	\$ 8,508,194	\$ 7,939,472	\$ 7,127,749	\$ 6,559,027	\$ 3,863,256	\$ 3,863,256
Dec-24 2016 - Jan 2017	Remainder Signing Pmt	\$ 19,635,078	\$ 17,846,751	\$ 16,425,226	\$ 15,246,702	\$ 12,550,931	\$ 11,941,129
	Addl Pmts (25%)	\$ 8,999,835	\$ 7,780,231	\$ 7,170,428	\$ 6,560,626	\$ 6,560,626	\$ 5,950,824
	Lse Pmts (100%)	\$ 10,635,243	\$ 10,066,520	\$ 9,254,798	\$ 8,686,076	\$ 5,990,304	\$ 5,990,304
Feb - Apr 2017	Remainder Signing Pmt	\$ 20,244,880	\$ 18,456,553	\$ 17,035,029	\$ 15,856,504	\$ 13,160,733	\$ 12,550,931
	Addl Pmts (25%)	\$ 9,609,637	\$ 8,390,033	\$ 7,780,231	\$ 7,170,428	\$ 7,170,428	\$ 6,560,626
	Lse Pmts (100%)	\$ 10,635,243	\$ 10,066,520	\$ 9,254,798	\$ 8,686,076	\$ 5,990,304	\$ 5,990,304
May - Jul 2017	Remainder Signing Pmt	\$ 20,854,682	\$ 19,066,355	\$ 17,644,831	\$ 16,466,306	\$ 13,770,535	\$ 13,160,733
	Addl Pmts (25%)	\$ 10,219,439	\$ 8,999,835	\$ 8,390,033	\$ 7,780,231	\$ 7,780,231	\$ 7,170,428
	Lse Pmts (100%)	\$ 10,635,243	\$ 10,066,520	\$ 9,254,798	\$ 8,686,076	\$ 5,990,304	\$ 5,990,304
Aug - Oct 2017	Remainder Signing Pmt	\$ 21,464,484	\$ 19,676,157	\$ 18,254,633	\$ 17,076,108	\$ 14,380,337	\$ 13,770,535
	Addl Pmts (25%)	\$ 10,829,242	\$ 9,609,637	\$ 8,999,835	\$ 8,390,033	\$ 8,390,033	\$ 7,780,231
	Lse Pmts (100%)	\$ 10,635,243	\$ 10,066,520	\$ 9,254,798	\$ 8,686,076	\$ 5,990,304	\$ 5,990,304
Nov - Dec 23 2017	Remainder Signing Pmt	\$ 22,074,287	\$ 20,285,959	\$ 18,864,435	\$ 17,685,911	\$ 14,990,140	\$ 14,380,337
	Addl Pmts (25%)	\$ 11,439,044	\$ 10,219,439	\$ 9,609,637	\$ 8,999,835	\$ 8,999,835	\$ 8,390,033
	Lse Pmts (100%)	\$ 10,635,243	\$ 10,066,520	\$ 9,254,798	\$ 8,686,076	\$ 5,990,304	\$ 5,990,304
Dec-24 2017 - Jan 2018	Remainder Signing Pmt	\$ 24,201,335	\$ 22,413,008	\$ 20,991,484	\$ 19,812,959	\$ 17,117,188	\$ 16,507,386
	Addl Pmts (25%)	\$ 11,439,044	\$ 10,219,439	\$ 9,609,637	\$ 8,999,835	\$ 8,999,835	\$ 8,390,033
	Lse Pmts (100%)	\$ 12,762,291	\$ 12,193,569	\$ 11,381,847	\$ 10,813,124	\$ 8,117,353	\$ 8,117,353
Feb - Apr 2018	Remainder Signing Pmt	\$ 24,811,137	\$ 23,022,811	\$ 21,601,286	\$ 20,422,761	\$ 17,726,990	\$ 17,117,188
	Addl Pmts (25%)	\$ 12,048,846	\$ 10,829,242	\$ 10,219,439	\$ 9,609,637	\$ 9,609,637	\$ 8,999,835
	Lse Pmts (100%)	\$ 12,762,291	\$ 12,193,569	\$ 11,381,847	\$ 10,813,124	\$ 8,117,353	\$ 8,117,353
May - Jul 2018	Remainder Signing Pmt	\$ 25,420,940	\$ 23,632,613	\$ 22,211,088	\$ 21,032,563	\$ 18,336,792	\$ 17,726,990
	Addl Pmts (25%)	\$ 12,658,648	\$ 11,439,044	\$ 10,829,242	\$ 10,219,439	\$ 10,219,439	\$ 9,609,637
	Lse Pmts (100%)	\$ 12,762,291	\$ 12,193,569	\$ 11,381,847	\$ 10,813,124	\$ 8,117,353	\$ 8,117,353
Aug - Oct 2018	Remainder Signing Pmt	\$ 26,030,742	\$ 24,242,415	\$ 22,820,890	\$ 21,642,366	\$ 18,946,595	\$ 18,336,792
	Addl Pmts (25%)	\$ 13,268,450	\$ 12,048,846	\$ 11,439,044	\$ 10,829,242	\$ 10,829,242	\$ 10,219,439
	Lse Pmts (100%)	\$ 12,762,291	\$ 12,193,569	\$ 11,381,847	\$ 10,813,124	\$ 8,117,353	\$ 8,117,353
Nov - Dec 23 2018	Remainder Signing Pmt	\$ 26,640,544	\$ 24,852,217	\$ 23,430,693	\$ 21,642,366	\$ 19,556,397	\$ 18,946,595
	Addl Pmts (25%)	\$ 13,878,253	\$ 12,658,648	\$ 12,048,846	\$ 10,829,242	\$ 11,439,044	\$ 10,829,242
	Lse Pmts (100%)	\$ 12,762,291	\$ 12,193,569	\$ 11,381,847	\$ 10,813,124	\$ 8,117,353	\$ 8,117,353

**EXHIBIT 3-(cont.)**

Remainder Signing Payment escalation calculation example

Assumptions:

Navajo Nation execution of Amendment occurs on July 31, 2013  
 Effective Date is September 15, 2017

Then:

The proper set of numbers to use to calculate the escalated Remainder Signing Payment is found by going across the top of the chart in Exhibit 3 to the column with the heading: May-Jul 2013:

Then go down the first column in Exhibit 3 until the rows that say:

Aug - Oct 2017	Remainder Signing Pmt Addl Pmts (25%) Lse Pmts (100%)
Nov - Dec 23 2017	Remainder Signing Pmt Addl Pmts (25%) Lse Pmts (100%)

The intersection of this column and these rows contain the following values:

\$ 19,676,157
\$ 9,609,637
\$ 10,066,520

This means that the total un-escalated Remainder Signing Payment for the conditions in the assumptions above is \$19,676,157. Of this total, \$9,609,637 is to be escalated as provided in Section VIII.E.1 and \$10,066,520 is to be escalated as provided in Section VIII.E.2.

Additional Assumptions:

CPI for October 2011 = 226.421  
 CPI for October 2017 = 266  
 CPI For October 2018= 275  
 EF = 275/226.421 = 1.215  
 EF-1 = 0.215

The Remainder Signing Payment is to be paid within 18 months of the Effective Date. Under the assumptions above, the Remainder Signing Payment will be due by March 15, 2019. If it is paid on March 15, 2019, the Remainder Signing Payment would be:

$$\begin{aligned}
 \text{Total} &= [9,609,637(1+.25(\text{EF}-1))] + [(10,066,520)(\text{EF})] \\
 &= [9,609,637(1+.25(.215))] + [(10,066,520(1.215))] \\
 &= [9,609,637(1+.05375)] + [12,230,821] \\
 &= [10,126,154] + [12,230,821] \\
 &= \$22,356,975
 \end{aligned}$$

The portion of the Remainder Signing Payment that would be payable to the Community Fund is:

$$\begin{aligned}
\text{Comm. Fund Amt} &= (.02/(1+.02+.0278))\$ 12,230,821 \\
&= (.02/1.0478)\$ 12,230,821 \\
&=.019(\$12,230,821) \\
&=\$232,385.59
\end{aligned}$$

The portion of the Remainder Signing Payment that would be payable to the Scholarship Fund is:

$$\begin{aligned}
\text{Sch. Fund Amt} &= (.0278/1.0478)(\$ 12,230,821) \\
&= .0265(\$12,230,821) \\
&=\$324,116.75
\end{aligned}$$

The portion of the Remainder Signing Payment that would be payable against the Lease would be:

$$\begin{aligned}
\text{Lease Amt} &= \$12,230,821 - \$232,385.59 - \$324,116.75 \\
&= \$11,674,318.66
\end{aligned}$$

If the Remainder Signing Payment was made earlier than 18 months following the Effective Date such that the October, 2018 CPI is not available, but the October, 2017 CPI is available, then the Remainder Signing Payment would be calculated using:

$$\begin{aligned}
\text{EF} &= 266/226.421 = 1.175 \text{ and} \\
\text{EF-1} &= .175
\end{aligned}$$

## EXHIBIT 4

### Escalation Calculation Examples

The following calculations are examples of how Payments are escalated in accordance with Section VIII. In the event of a conflict Section VIII governs.

These are the base assumptions for all the examples below: NN approval on February 15, 2013

Non-U.S. Participants Approval April 10, 2014

Oct. 2011 CPI (BI) = 226.421 (actual)

Oct. 2013 CPI (EI) = 233.211 (assumed)

Oct. 2014 CPI (EI) = 235.111 (assumed)

#### Accrual Period Escalation

Based on the above assumptions, the accrual amount will be paid before May 9, 2014. Therefore, the Extension Index that should be used is the October 2013 CPI value of 233.211 (assumed)

#### Accrued Lease Payments

= \$6,369,090 for Dec 23, 2012

= \$6,369,090 for Dec 23, 2013

Total accrual lease Payments = \$12,738,180

Escalated Value = (accrued amount)(EF) where  $EF = EI/BI$

Escalated Value =  $\$12,738,180(233.211/226.421)$

= \$13,120,177.44

#### Accrued Community Payments

= \$9,000,000(.757)(0.02)

= \$136,260 for Dec 23, 2012 and also for Dec. 23, 2013

Total Accrued Community Payments  $\$136,260 + \$136,260 = \$272,520$

Escalated Value = (accrued amount)(EF) where  $EF = EI/BI$

Escalated Value =  $\$272,520(233.211/226.421)$

= \$280,692.43

#### Accrued Scholarship Payments

= \$9,000,000(.757)(0.0278)

= \$189,401.40 for Dec 23, 2012 and also for Dec. 23, 2013

Total Accrued Scholarship Payments  $\$189,401.40 + \$189,401.40 = \$378,802.80$

Escalated Value = (accrued amount)(EF) where  $EF = EI/BI$

Escalated Value =  $\$378,802.80(233.211/226.421)$

= \$390,162.48

Accrued Additional Payments

= \$1,899,672 for Jan/2013, Apr/2013, Jul/2013, Oct/2013, Jan/2014

= \$1,899,672(5)

Total Accrued Additional Payments = \$9,498,360

Escalated Value = (accrued amount) (1+.25(EF-1)) where EF=EI/BI

Escalated Value = \$9,498,360(1+.25(EF-1))

= \$9,498,360(1+.25((233.211/226.421)-1))

= \$9,498,360(1+.25(1.03-1))

= \$9,498,360(1+0.075)

= \$10,210,737

Total Accrued Payment due to the Navajo Nation by May 9, 2014

= \$13,120,177.44+\$280,692.43+\$390,162.48+\$10,210,737

= \$24,001,769.35

**Lease Payment following execution by the Navajo Nation and all Non-U.S. Participants**

Non-U.S. Participants Lease Payment due on December 23, 2014

Escalated Value = \$6,829,648.84(EF) where EF=EI/BI

= \$6,829,648.84(EF)

= \$6,829,648.84(235.111/226.421)

= \$6,829,648.84(1.038)

= \$7,091,769.62

**Additional Payment following execution by the Navajo Nation and all Non-U.S. Participants**

Non-U.S. Participants Additional Payment due on April 30, 2014, July 31, 2014, October 31,

2014

= \$1,899,672 (1+.25(EF-1)) where EF=EI/BI

= \$1,899,672(1+.25(233.211/226.421)-1))

= \$1,899,672(1+.25(1.03-1))

= \$1,899,672(1+.25(0.03))

= \$1,899,672(1+.0075)

= \$1,899,672(1.0075)

= \$1,913,919.54