



**United States
Department of Energy**

**WESTERN AREA
POWER ADMINISTRATION
Desert Southwest
Regional Office**

AGREEMENT

AGREEMENT NO. 12-DSR-12238

BETWEEN

**UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION**

AND

CERTAIN NAVAJO GENERATING STATION CUSTOMERS

FOR

**ENABLING AGREEMENT FOR
SALE OF ENERGY**

AGREEMENT NO. 12-DSR-12238

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1. **PREAMBLE:** This AGREEMENT is made this ____ day of _____, 2012, pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388); August 4, 1939 (53 Stat. 1187); August 4, 1977 (91 Stat. 565); September 13, 1982 (96 Stat. 877); October 24, 1992 (106 Stat. 2776), and Acts amendatory or supplementary to the foregoing Acts; between the United States of America, Department of Energy, acting by and through the Administrator, WESTERN AREA POWER ADMINISTRATION (Western), represented by the officer executing this Agreement or a duly appointed successor; and certain Navajo Generating Station customers (Purchaser(s)), their successors and assigns; sometimes individually called Party and collectively called Parties.

2. **EXPLANATORY RECITALS:**

- 2.1 The United States Bureau of Reclamation (Reclamation) has a 24.3% interest in the Navajo Generating Station to provide power for the Central Arizona Project (CAP).
- 2.2 Energy that is in excess of the energy needed by CAP to serve its loads (Excess Energy) is available for sale to provide additional revenues to support the CAP.
- 2.3 Western entered into Contract No. 11-DSR-12296 with Reclamation and the Central Arizona Water Conservation District for the purpose of providing power marketing services to Reclamation for sale of Excess Energy.
- 2.4 Western is selling the energy specified in this Agreement on behalf of Reclamation.
- 2.5 Sales made under this Agreement using a trade confirmation are considered distinct transactions between a specific Purchaser and Western. Each transaction is designed to be confidential between such Purchaser and Western, and is not intended to be shared with, or signed by, any other Party, except as otherwise agreed.

3. **AGREEMENT:** The Parties agree to the terms and conditions set forth herein.

4. **TERM OF AGREEMENT:**

- 4.1 This Agreement shall become effective upon execution by a Purchaser, and, except as otherwise provided for in this Section and Section 8 hereof, shall remain in effect until December 31, 2022; and shall automatically renew for successive commitment periods of five (5) years thereafter unless otherwise terminated by

Western under the terms of this Agreement; provided, that this Agreement terminates no later than December 31, 2032.

4.2 Any Purchaser may withdraw from this Agreement by providing thirty (30) days advance written notice to Western; provided, that no such termination will become effective until the final termination date of all such Purchaser's trade confirmation(s) executed under this Agreement (Confirm).

4.3 Western may terminate this Agreement with any or all Purchasers by providing thirty (30) days advance written notice to all applicable Purchasers; provided, that no such termination will become effective until the final termination date of all applicable Confirms.

5. **SALE OF ENERGY:**

5.1 Western agrees to the sale of energy executed by a Confirm as a unit contingent resource without reserves. As a unit contingent resource, energy will only be available for delivery when the generating units are producing energy. Therefore, it is not a default by Western if delivery is prevented due to a generator curtailment and/or generator outage. Quantity and all other delivery conditions will be as specified in each Confirm.

5.2 All other terms and conditions not specified in this Agreement or the applicable Confirm shall be in accordance with applicable provisions of the Western Systems Power Pool Agreement, Western Contract No. 91-PAO-10422 (WSPP Agreement), dated October 21, 2011, as may be amended, and are hereby made a part of this Agreement the same as if they had been expressly set forth herein. However, if the provisions of the WSPP Agreement are in conflict with this

Agreement and the applicable Confirm, the terms of this Agreement and the applicable Confirm shall control.

6. **TAXES**: Purchaser shall be liable for and shall pay, or cause to be paid, all taxes applicable to the transaction.

7. **INVOICES AND PAYMENTS**:

7.1 All invoices and payments due under this Agreement shall be made in accordance with the terms of the WSPP Agreement.

7.2 Upon request of Western after execution of this Agreement with each Purchaser, the Purchaser will supply Western with all applicable point of contact (POC) information, including, but not limited to, billing and scheduling information.

8. **DEFAULT BY PURCHASER**: A Purchaser's failure to make payment for energy in accordance with Section 7 herein shall relieve Western of any obligation to deliver energy in accordance with the applicable Confirm(s). Should a Purchaser fail to make such payments, then Western shall have the right to declare the Purchaser in default and terminate this Agreement with such Purchaser in accordance with the terms of the WSPP Agreement. These rights shall be in addition to all other rights and remedies available to Western, either by law or in equity, for breach of the terms herein and the applicable Confirm(s). In the event of a default by a Purchaser, such Purchaser shall not be entitled to recover damages, or a termination payment calculated in accordance with Sections 21 and 22 of the WSPP Agreement.

9. **FINANCIAL LIMITATIONS OF WESTERN**: Each Purchaser recognizes that any fees, penalties, or other monies due to Purchaser or any other entity shall be the

responsibility of Reclamation and that Western has no responsibility whatsoever for payment of any such fees, penalties, or other monies.

10. **EXHIBITS**: No initial exhibit to this Agreement is attached; however, exhibits may be added and modified in the future, as required, and shall be made a part of this Agreement.
11. **ATTACHMENTS**: No initial attachment to this Agreement is attached; however, attachments may be added and modified in the future, as required, and shall be made a part of this Agreement.
12. **AMENDMENTS**: Western may amend the terms of this Agreement effective thirty (30) days after sending written notice to Purchasers. Execution by Purchaser of a new Confirm after the effective date of the amended Agreement shall be deemed Purchaser's acknowledgement and acceptance of the amended terms; provided, however, that the amended terms shall apply only to Confirms executed after the effective date and not to any Confirms executed prior to that time.
13. **GENERAL POWER CONTRACT PROVISIONS**: Western's General Power Contract Provisions (GPCP), effective September 1, 2007, are attached hereto, and are hereby made a part of this Agreement the same as if they had been expressly set forth herein; provided, that only provisions 1.2, 2, 31, 35.2 and 38 through 45 shall apply; and further provided, that if these applicable provisions in the GPCP are in conflict with this Agreement and a Confirm, the terms of this Agreement and the Confirm shall control.
14. **EXECUTION BY COUNTERPARTS**: This Agreement may be executed in any number of counterparts and, upon execution and delivery by each Party, the executed and delivered counterparts together shall have the same force and effect as an original instrument as if all Parties had signed the same instrument. Any signature page of this

Agreement may be detached by any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto, by having attached to it one or more signature pages.

15. **AUTHORITY TO EXECUTE**: Each individual signing this Agreement certifies that the Party represented has duly authorized such individual to execute this Agreement that binds and obligates the Party.

The Party listed below has caused this Agreement No. 12-DSR-12238 to be executed the date first written above.

DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION

By NOT EXECUTABLE - TEMPLATE ONLY

Penny D. Casey
Title Manager, Energy Management and

Marketing Office
Address Desert Southwest Regional Office

P.O. Box 6457

Phoenix, AZ 85005-6457

[To be used if a Party signs when this Agreement is first executed.] The Party listed below has caused this Contract No. 12-DSR-12238 to be executed the date first written above.

[PURCHASER NAME]

Attest:

By NOT EXECUTABLE - TEMPLATE ONLY

Title _____

Address _____

Title

[To be used when a future Party is added.] The Parties listed below have caused this

Purchaser to be made a part of Agreement No. 12-DSR-12238 on this _____ day of _____,
2012.

DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION

By NOT EXECUTABLE - TEMPLATE ONLY

Penny D. Casey

Title Manager, Energy Management and
Marketing Office

Address Desert Southwest Regional Office

P.O. Box 6457

Phoenix, AZ 85005-6457

[PURCHASER NAME]

Attest:

By NOT EXECUTABLE - TEMPLATE ONLY

Title _____

Address _____

Title