



**United States
Department of Energy**

**WESTERN AREA
POWER ADMINISTRATION
Desert Southwest Region**

CONTRACT

CONTRACT NO. [XX-DSR-XXXXX]

BETWEEN

**UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Desert Southwest Region
Boulder Canyon Project**

AND

[NATIVE AMERICAN ENTITY]

AND

[RECIPIENT OF TRIBAL ENTITY'S ALLOCTION]

FOR

BENEFIT ARRANGEMENT

CONTRACT NO. [XX-DSR-XXXXX]

AMONG

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Desert Southwest Regional Office
Boulder Canyon Project

AND

[NATIVE AMERICAN ENTITY]

AND

[RECIPIENT OF TRIBAL ENTITY'S ALLOCATION]

FOR

BENEFIT ARRANGEMENT

Table of Contents

<u>Section</u>	<u>Title</u>	<u>Page No.</u>
1	Preamble.....	1
2	Explanatory Recitals.....	2
3	Goal and Objectives	4
4	Agreement	4
5	Term of Contract	5
6	Delivery of Resources by Western.....	6
7	ES Contract Compliance	6
8	Benefit Determination and Payment	7
9	Correspondence	10
10	Authorized Representatives.....	10
11	Successors and Assigns	11
12	No Third Party Rights	11
13	Force Majeure.....	11
14	Liability	12
15	Amendments and Modifications	13
16	Exhibits.....	13
17	General Power Contract Provisions	13
18	Authority to Execute	13
19	Execution by Counterparts	13

Signature Clause 14
Exhibit A – Monthly Tribal Benefit Calculation
General Power Contract Provisions

DRAFT

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WESTERN AREA POWER ADMINISTRATION
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[RECIPIENT OF TRIBAL ENTITY'S ALLOCTION]

FOR

BENEFIT ARRANGEMENT

1. **PREAMBLE:** This Contract is made this ____ day of _____, [2015]
(Contract), pursuant to the following Acts of Congress; Reclamation Act of June 7, 1902
(32 Stat. 388); the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057,
43 U.S.C. 617); the Boulder Canyon Project Adjustment Act of July 19, 1940
(54 Stat. 774, 43 U.S.C. 618); the Colorado River Basin Project Act, of September 30,
1968 (82 Stat. 885, 43 U.S.C. 1501); the Department of Energy Organization Act of
August 4, 1977 (91 Stat. 565, 42 U.S.C. 7101); Hoover Power Plant Act of August 17,
1984 (98 Stat. 1333, 43 U.S.C. 619); Hoover Power Allocation Act of December 20,
2011 (125 Stat. 777, 43 U.S.C. 619a); 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 Contract or a duly appointed successor; [*NATIVE AMERICAN ENTITY (Tribal Entity)*]; and the [*RECIPIENT OF TRIBAL ENTITY FEDERAL HYDRO POWER (Power Recipient)*], [*description of Power Recipient*]. Western, Tribal Entity, and Power Recipient are sometimes each individually called Party and collectively called Parties; except that the Tribal Entity and Power Recipient may each individually be called Contractor and collectively called Contractors. [*Native American Entity*] is a federally recognized Native American Tribe as defined in the Indian Self-Determination Act of 1975, 25 U.S.C. 450b, as amended, and possesses sovereign status and powers by virtue of such recognition.

2. **EXPLANATORY RECITALS:**

- 2.1 Western's Administrator published Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects in Federal Register Notice (77 FR 35671, June 14, 2012), as required by the Hoover Power Allocation Act of 2011, collectively hereinafter called "Conformed Criteria" which serve as the regulations for the sale of Electric Service (ES) from the Boulder Canyon Project (PROJECT).
- 2.2 The Conformed Criteria provides for the creation of fifty-year contracts for PROJECT power to commence on October 1, 2017.
- 2.3 The Conformed Criteria formally established allocations of Schedule A and Schedule B power to existing Contractors, excess energy provisions under Schedule C, and a resource pool defined as Schedule D. In accordance with Hoover Power Allocation Act, Western allocated portions of Schedule D to the Arizona Power Authority and the Colorado River Commission of Nevada.

Western was directed to allocate the remaining portions of Schedule D to new Allottees customers, including Native American Tribes or their organizations, not receiving contingent capacity and firm energy under Schedule A and Schedule B.

- 2.4 Western's adoption of the Energy Planning and Management Program (EPAMP), dated October 20, 1995 in Federal Register Notice 60 FR 54151 require all Project electric service contractors to prepare Integrated Resource Plans (IRP). EPAMP was revised in 65 FR 16789 to allow customers more alternatives in meeting the IRP requirements.
- 2.5 Western published notice of final marketing criteria for use in allocating power from the Project resource pool in the Federal Register (70 FR 79443), dated December 30, 2013. Western recognized that Native American entities may be allowed to receive the economic benefits of the Project resource under certain circumstances.
- 2.6 In the Federal Register (*XX FR XXXXX*), dated [*date*], Western approved an allocation of electric service to Native American entities, including the Tribal Entity, subject to the execution of a definitive contract.
- 2.7 The Tribal Entity executed its Project ES Contract No. [*XX-DSR-XXXXX*] (ES Contract) on [*Date*], which provides for the delivery of the Tribal Entity's allocation of Project power (Tribal Entity's Allocation) to the Tribal Entity.
- 2.8 Cooperation among Native American entities and other organizations with a Project power allocation may result in efficiencies and enhanced beneficial and economic use and dispatch of Project resources.

- 2.9 The Power Recipient is engaged in the purchase, resale, transmission, and distribution of electric power in the State of [*State*], and has an allocation of Federal Hydro Resources from the Project.
- 2.10 Since the Parties agree that creating a tribal utility to directly accept the Tribal Entity's Allocation is not a viable option, the Tribal Entity seeks to finalize arrangements to receive the economic benefit of its Project allocation through the Power Recipient.
- 2.11 The Power Recipient agrees to accept the Tribal Entity's Allocation as provided herein and to compensate the Tribal Entity for the economic benefits received therefrom based upon the Power Recipient's cost of displaced energy less the cost of the Project resource.
- 2.12 The Parties desire to enter into this Contract to identify the responsibilities of each Party necessary to enact the benefit arrangement.
3. **GOAL AND OBJECTIVES:**
- 3.1 The goal of this Contract is to promote energy self-sufficiency of the Native American communities and improve reliability in delivery of the benefits of Federal Power to the intended beneficiaries.
- 3.2 The objectives of this Contract are to utilize and schedule the Project resource in a manner which results in the efficient use of resources; reduce resource costs to the Parties; and deliver the benefits of Project power to the Native American Tribes and other tribal organizations as intended in EPAMP.
4. **AGREEMENT:** The Parties agree to the terms and conditions set forth herein.

5. **TERM OF CONTRACT:**

5.1 This Contract shall become effective on *[Date]*, and shall remain in effect until midnight, Mountain Standard Time, *[Date]*, unless terminated earlier as provided for in subsection 5.2 herein.

5.2 This Contract may be terminated as follows:

5.2.1 Upon termination of the ES Contract prior to *[Termination Date from 5.1]*.

5.2.2 By any Party, at any time, by giving one hundred eighty (180) days written notice of termination to the other Parties.

5.2.3 Upon sixty (60) days written notice from the Tribal Entity should the Tribal Entity be obligated to reimburse the Power Recipient under the terms of subsection 8.3.1.

5.3 Upon termination of this Contract, all obligations previously agreed to by the Parties pursuant to this Contract shall survive until satisfied.

5.4 In the event that this Contract terminates prior to the termination of the ES Contract, Western and the Tribal Entity shall restore the terms of the ES Contract to provide for the delivery of energy to the Tribal Entity as listed in the original terms of the ES Contract or as otherwise requested by the Tribal Entity. The Tribal Entity may request an alternative delivery which provides for the continued economic benefit to the Tribal Entity of the Project resource.

6. **DELIVERY OF RESOURCES BY WESTERN:**

6.1 Subject to the terms of the ES Contract, and beginning with [Month Year], energy deliveries, the Power Recipient will provide the transmission resources needed to take delivery of the Tribal Entity's resource at the Mead Switchyard.

6.2 This delivery agreement, or any subsequent request for delivery, does not create any rights for Power Recipient to the Tribal Entity's Allocation other than participation in this Contract as outlined herein.

7. **ES CONTRACT COMPLIANCE:**

7.1 Upon execution of this Contract, and when changes are made to the Tribal Entity's ES Contract, Western shall provide the Power Recipient with a copy of the Tribal Entity's ES Contract, including exhibits or other attachments, as may be amended from time to time. The Power Recipient agrees to accept the Tribal Entity's Allocation for crediting purposes and is designated to be responsible for exercising the privileges and responsibilities of the Tribal Entity pursuant to Section 7 and 9, as may be applicable, and Sections 6.10, 6.11.2, 8, 17, and 19 of the ES Contract, including Exhibits A through F attached thereto. Such designation shall not be construed as an assignment to the Power Recipient of title to the Tribal Entity's Allocation, which is, and shall remain, the sole possession of the Tribal Entity.

7.2 Pursuant to Section 8 herein, the Power Recipient shall be responsible for the Tribal Entity's payments to Western under the ES Contract. In the event of any default by the Power Recipient, the Tribal Entity shall remain liable to Western for any charges payable under the ES Contract.

8. **BENEFIT DETERMINATION AND PAYMENT**: The Parties hereby establish a benefit arrangement which shall provide the Tribal Entity with the benefit of the Tribal Entity's Allocation (Tribal Benefit). The Tribal Entity shall receive the Tribal Benefit as a monthly payment from the Power Recipient as provided for in this Section 8. During the term of this Contract:

8.1 In accordance with Section 6 herein, the Power Recipient, or its scheduling agent, shall schedule all capacity and energy available from the Tribal Entity's Allocation, as identified by Western, and shall pay Western all amounts payable by the Tribal Entity under the ES Contract.

8.2 Western shall provide monthly invoices to the Power Recipient for the Tribal Entity's obligation under the ES Contract and the Power Recipient shall pay such invoices in accordance with the terms of the ES Contract. Western shall provide copies of all such invoices to the Tribal Entity.

8.3 The Tribal Entity will initially be calculated in accordance with the following terms and as shown in Exhibit A, attached hereto. Payment terms may be revised from time to time in Exhibit A.

EXAMPLE BENEFIT PAYMENT

8.3.1 The amount of the Tribal Benefit to be paid to the Tribal Entity by the Power Recipient shall be stated in a monthly benefit statement to the Tribal Entity and shall be calculated according to the following formula:

$$\text{Monthly Tribal Benefit (\$)} = \text{Cost A} - \text{Cost B}$$

Where:

- A) Cost A is the Power Recipient's specified Displacement Energy Cost Rate (DECR) multiplied by the number of megawatt hours (MWh) (Energy Delivered) associated with the Tribal Entity's Allocation for the previous month (Delivery Month).
- B) Cost B is the monthly total cost to the Power Recipient associated with the Energy Delivered, including charges for losses and other applicable costs as such costs were specified on Western's invoice(s) for the Delivery Month.

If Cost B exceeds Cost A, the Tribal Entity shall reimburse the Power Recipient the amount by which Cost B exceeds Cost A within thirty (30) days of the Tribal Entity's receipt of notice from the Power Recipient; provided that, should this occur, the Tribal Entity shall have the right to terminate this Contract on sixty (60) days written notice.

8.3.2 Within twenty (20) days of the end of the Delivery Month, the Power Recipient shall make payment to the Tribal Entity for the full amount of the Tribal Benefit as calculated for the Delivery Month.

8.3.3 The DECR value and term, as they may be revised from time to time, are listed in Exhibit A.

8.3.4 Commencing with [October 1, 20YY], on [October 1] of each year, the Power Recipient shall provide written notification to the Tribal Entity of Power Recipient's proposed DECR for the following fiscal year. The Tribal Entity shall be provided the opportunity, but shall have no

obligation, to inquire as to the calculation of the DECR and to make any additional inquiries or comments concerning such determination.

8.4 Annual Reconciliation Statement:

8.4.1 The Power Recipient shall provide an annual reconciliation statement (Statement) for each twelve (12) month period, ending September 30, or portion thereof, for the Contract term. Total benefit payment balances for this accounting period for each Contractor will be calculated and provided to both Contractors in such Statement. Credit balances are due within thirty (30) days of receipt of the Statement.

8.4.2 Within thirty (30) days of receipt of such Statement, the Tribal Entity must note any discrepancies or other objections to the Statement. In the absence of such notice within the specified time, all accounts for that period shall be deemed settled; and the Statement shall be considered a fully approved complete accord and satisfaction of all transactions for the reporting period on the thirty-first (31st) day after its receipt.

8.4.3 Any benefit payments or balances determined in the reconciliation accounting not paid when due shall accrue interest at the lesser of (a) the per annum rate of interest equal to the prime lending rate as may, from time to time, be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day, then on the most recent preceding day on which published), plus two percent (2%) or (b) the maximum rate permitted by applicable law.

8.5 To ensure that the Tribal Entity's Allocation benefits the entire Tribe or Community, the use of the economic benefit should be determined by the Tribal Entity's governing body. Upon request from Western, the Tribal Entity shall inform Western of the determination the Tribe has made concerning the utilization of the economic benefit.

9. **CORRESPONDENCE**: The Parties shall notify each other of events or communications which might affect the administration, terms, or compliance of this Contract or the Tribal Entity's ES Contract. This would include, but not be limited to, requests for the Tribal Entity to participate in the annual Project resource exchange, or notice of power delivery, billing, or payment issues. This requirement is not intended to apply to communications required for the routine administration, scheduling, billing, or payment of the Tribal Entity's Allocation.
10. **AUTHORIZED REPRESENTATIVES**: Each Party shall, within thirty (30) days of execution of this Contract, by written notice to all the other Parties, designate the representative(s) who is (are) authorized to act on its behalf with respect to those matters contained herein. Each Party may change the designation of its authorized representative(s) upon written notice to the other Parties. Except as provided for in this Contract, the authorized representatives shall have no authority to change any of the terms and conditions of this Contract. The initial addresses listed below may be changed by thirty (30) days advance written notice to the other Parties:

TRIBAL ENTITY: *[Contact Information]*

POWER RECIPIENT: [Contact Information]

WESTERN: Ms. Deborah K. Emler
Assistant Regional Manager
for Federal Power Programs
Desert Southwest Regional Office
P.O. Box 6457
Phoenix, AZ 85005-6457

11. **SUCCESSORS AND ASSIGNS:** This Contract shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto; provided that, no Party shall assign its interest in this Contract in whole or in part without the prior written consent of the other Parties.
12. **NO THIRD PARTY RIGHTS:** The Parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of this Contract or of any duty, covenant, obligation, or undertaking established herein.
13. **FORCE MAJEURE:** An event of Force Majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any curtailment, order, regulation, or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Any Party will not be considered in default as to any obligation under this Contract if prevented from fulfilling the obligation due to an event of Force Majeure. However, if any Party's performance

under this Contract is hindered by an event of Force Majeure, it shall make all reasonable efforts to perform its obligations under this Contract.

14. **LIABILITY**: The Power Recipient shall have no liability to the Tribal Entity and the Tribal Entity shall have no liability to the Power Recipient for any breach by Western of its obligations under the ES Contract. Except for willful actions, as between the Power Recipient and the Tribal Entity hereto, the Power Recipient and the Tribal Entity shall at all times assume and bear all risk of loss or damage for any of its own property damaged as a result of the transaction covered by this Contract, no matter how such loss, damage, or injury may occur. The Power Recipient and the Tribal Entity shall also assume, bear, and pay all loss, damage, or injury to its respective customers or customers' property for which it may be legally liable and which are proximately caused by the transaction covered under this Contract. Except as otherwise expressly provided for in this Contract, in no event shall the Power Recipient or the Tribal Entity, including their respective officers, directors, employees, and agents, be liable to the other for indirect, incidental, or consequential loss or damage resulting from, arising out of, due to, or in connection with the performance, non-performance, or delay in performance of their respective obligations hereunder, whether based in contract, tort, strict liability, warranty, or otherwise.
15. **AMENDMENTS AND MODIFICATIONS**: This Contract may not be amended or modified by any Party except by subsequent mutual written agreement duly executed by the Parties.
16. **EXHIBITS**: The initial exhibit is attached hereto, and is incorporated into this Contract in accordance with its terms until superseded by a subsequent exhibit. Inasmuch as

certain provisions of this Contract may change during the term of this Contract, they will be set forth in exhibits as formulated and modified from time to time and as agreed upon by the Parties in writing.

17. **GENERAL POWER CONTRACT PROVISIONS:** Western's General Power Contract Provisions (GPCP) effective September 1, 2007, attached hereto, are hereby made a part of this Contract, the same as if they had been expressly set forth herein; provided, that Provisions 20 through 30 shall not apply and provided further, that if the Provisions in the GPCP are in conflict with this Contract, the terms of this Contract shall control.
18. **AUTHORITY TO EXECUTE:** Each individual signing this Contract certifies that the Party represented has duly authorized such individual to execute this Contract that binds and obligates the Party.
19. **EXECUTION BY COUNTERPARTS:** This Contract 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 if all Parties had signed the same document. Any signature page of this Contract may be detached from any counterpart of this Contract without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Contract identical in form hereto, by having attached to it one or more signature pages.

The Party named below has caused this Contract No. [XX-DSR-XXXXX] to be executed in accordance with Section 1, herein.

**DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION**

By _____
Deborah K. Emler
Title _____
Assistant Regional Manager
for Federal Power Programs
Address _____
Desert Southwest Regional Office

P.O. Box 6457

Phoenix, AZ 85005-6457

The Party named below has caused this Contract No. [XX-DSR-XXXXX] to be executed in accordance with Section 1, herein.

[*TRIBAL ENTITY*]

By _____

Title _____

Address _____

DRAFT

The Party named below has caused this Contract No. [XX-DSR-XXXXX] to be executed in accordance with Section 1, herein.

[POWER RECIPIENT]

By _____

Title _____

Address _____

DRAFT

MONTHLY TRIBAL BENEFIT CALCULATION

1. This Exhibit A (Exhibit A), effective under and as a part of Contract No. XX-DSR-XXXXX (Contract) shall become effective upon execution of the Contract, and shall remain in effect until superseded by another Exhibit A; provided this Exhibit A, or any superseding Exhibit A, shall terminate upon expiration of the Contract.
2. In accordance with the terms set forth in subsection 8.3 of the Contract, the amount of the Tribal Benefit to be paid to the Tribal Entity by the Power Recipient shall be stated in a monthly benefit statement to the Tribal Entity and shall be calculated according to the following formula:

$$\text{Monthly Tribal Benefit (\$)} = \text{Cost A} - \text{Cost B}$$

Where:

- A) Cost A is the Power Recipient's specified Displacement Energy Cost Rate (DECR) multiplied by the number of megawatt hours (MWh) (Energy Delivered) associated with the Tribal Entity's Allocation for the previous month (Delivery Month).
- B) Cost B is the monthly total cost to the Power Recipient associated with the Energy Delivered, including charges for losses and other applicable costs as such costs were specified on Western's invoice(s) for the Delivery Month.

If Cost B exceeds Cost A, the Tribal Entity shall reimburse the Power Recipient the amount by which Cost B exceeds Cost A within thirty (30) days of the Tribal Entity's receipt of notice from the Power Recipient; provided that, should this occur, the Tribal Entity shall have the right to terminate this Contract on sixty (60) days written notice.

Exhibit A
Contract No. [XX-DSR-XXXXX]
(Tribal Entity)

3. **DECR**: In accordance with the terms set forth in subsection 8.3 of the Contract, the initial (*Power Recipient*) DECR is \$*amount* per MWH through [*date*].
4. This Exhibit A may be modified in accordance with Section 16 of the Contract.

DRAFT