

jurisdiction of the ONTC or the Navajo Nation to assert or assess any taxes against APS with respect to the Facilities, APS' activities at the Facilities, or with respect to any other properties or activities within the Navajo Nation.

(ii) If APS, or any of its representatives, officers, employees, departments, or agents (a) commences any judicial or administrative action challenging this Restated Agreement or APS' authority to enter into it, or (b) otherwise in any manner invalidates or breaches this Restated Agreement or takes any action contrary to this Restated Agreement, the ONTC may, in its sole discretion, elect to seek specific performance of or terminate this Restated Agreement. APS agrees and recognizes that, if the ONTC elects to terminate this Restated Agreement, the ONTC has preserved its rights to assert jurisdiction to assess taxes against APS from and after the date of termination with respect to the Facilities, APS' activities at the Facilities, or with respect to any other properties or activities of APS within the Navajo Nation. If the ONTC elects to terminate this Restated Agreement, the ONTC shall be under no further obligation to accept Settlement Payments in satisfaction of APS' obligations.

(iii) If any person or entity not a Party to this Restated Agreement or the Navajo Nation, or any of their representatives, officers, employees, agencies, departments or agents, commences any judicial, administrative or other action challenging in any way the Restated Agreement's validity, the Parties shall jointly request that the court, tribunal, agency, or official before which the action is pending dismiss the action. If the action is not dismissed, either Party may file an appropriate responsive pleading, or otherwise act as reasonably necessary to respond to the action or to otherwise protect such Party. If any person, including the Navajo Nation or ONTC, brings an action or proceeding to assert or challenge the jurisdictional authority of the Nation or ONTC to tax the Facilities or activities at the Facilities with respect to such other person other than APS, each Party agrees not to rely on any ruling in such action or proceeding for purposes of challenging the validity of this Restated Agreement as long as the other Party is not in material breach hereof.

(iv) If any court, tribunal, agency or official determines that this Restated Agreement is non-binding on the ONTC or the Navajo Nation, APS may elect to terminate this Restated Agreement, and if so terminated, APS shall have no further obligation or liability to make any Settlement Payments from the date of termination forward. The ONTC agrees and recognizes that in such circumstance APS has preserved its rights to contest the jurisdiction of the Navajo Nation and ONTC to

assert or assess any taxes against APS with respect to the Facilities, APS' activities at the Facilities, or with respect to any other properties or activities within the Navajo Nation.

(v) If any court, tribunal, agency or official determines that this Restated Agreement is non-binding on APS, the ONTC may elect to terminate this Restated Agreement, and if so terminated, APS agrees and recognizes that in such circumstance, the ONTC has preserved its rights to assert jurisdiction to assess any taxes against APS with respect to the Facilities, APS' activities at the Facilities, or with respect to any other properties or activities within the Navajo Nation.

c. Other Taxes. Nothing in this Restated Agreement affects the rights, if any, of (i) the Navajo Nation or ONTC to seek to enforce taxes other than the Sales Tax (except as otherwise provided in Section 2(c) above), PIT or BAT on APS or the Facilities or (ii) APS to challenge any such action by the Navajo Nation or ONTC, including when permitted by federal law, bringing such an action in federal court.

d. Enforcement of the Restated Agreement. Enforcement of this Restated Agreement by either Party shall be pursuant to this Restated Agreement and not pursuant to any Navajo Nation or other law independent of this Restated Agreement. Nothing in this Restated Agreement shall or may be deemed to limit a Party's right to seek enforcement of this Restated Agreement or defend any claim in federal or tribal court where otherwise permitted by law. Nothing in this Restated Agreement shall or may be deemed as a consent to federal or tribal court jurisdiction by either Party.

6. Assignment.

APS may transfer or assign, without the consent of the Navajo Nation or ONTC, all or any portion of its interests and obligations under this Restated Agreement to any parent, subsidiary, affiliate or successor in interest of APS by merger, acquisition, or consolidation or to any other current or future owner of the Facilities, provided that the assignee assumes in writing all of APS' obligations under this Restated Agreement.

7. Representations.

Each Party represents and warrants as of the Effective Date of this Restated Agreement as follows:

a. It has full legal right, power and authority to execute, deliver and perform this Restated Agreement;

b. It has taken all appropriate and necessary action to authorize the execution, delivery and performance of this Restated Agreement;

c. It has obtained all consents, approvals and authorizations necessary for the valid execution and delivery of this Restated Agreement;

d. This Restated Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy or insolvency laws or by limitation upon the availability of equitable remedies;

e. It is not in violation of any applicable law promulgated or judgment entered by any federal, state, local or other governmental body, which violations, individually or in the aggregate, would adversely affect the performance of its obligations under this Restated Agreement; and

f. The execution, delivery and performance by it of this Restated Agreement, the compliance with the terms and provisions hereof and the carrying out of the transactions contemplated hereby, (i) do not conflict with and will not conflict with or result in a breach or violation of any of the terms and provisions of its organizational documents, and (ii) to the best of its knowledge, do not conflict with and will not conflict with or result in a breach or violation of any of the terms and provisions of any law, rule or regulation, or any order, writ, injunction, judgment or decree by any court or other governmental body against it or by which it or any of its properties is bound, or any loan agreement, indenture, mortgage, note, resolution, bond or contract or other agreement or instrument to which it is a party or by which it or any of its properties is bound, or constitute or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties.

8. Successors and Assigns.

This Restated Agreement shall be binding on and inure to the benefit of the Parties hereto and their successors and assigns.

9. Entire Agreement.

Except for any separate agreement of the Parties settling disputed claims related to applicability of the BAT to certain transmission and distribution facilities within the Navajo Nation, this Restated Agreement reflects the entire agreement of the Parties relating to taxation of the Facilities and no other agreement written or oral shall be used to effect any changes of the provisions retained herein. No amendment of this Restated Agreement shall be valid unless in writing and signed by all Parties.

10. Counterparts.

This Restated Agreement may be signed in counterparts, each of which shall be deemed an original. Facsimile signatures shall be as valid as original signatures until each Party receives a fully signed counterpart with original signatures. Each Party shall provide the other Party with original signatures so that each Party shall have a fully signed counterpart within five business days after the date of the last signature.

11. Relationship of Parties.

Nothing herein may be construed to create an association, joint venture, trust, or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties.

12. Severability.

Subject to the provisions of and except as otherwise provided in Section 5, Enforcement and Judicial Review, of this Restated Agreement, if any term or condition of this Restated Agreement is held to be invalid, void, or unenforceable by any court or tribunal of competent jurisdiction, that holding shall not affect the validity or enforceability of any other term or condition of this Restated Agreement, unless either Party determines in its sole discretion that enforcing the balance of the Restated Agreement would deprive that Party of a fundamental benefit of its bargain.

13. Adjustment of PIT and BAT Settlement Payment Amounts; Termination.

a. One year prior to the expiration of the Amended Term, the Parties shall commence good faith negotiations to establish PIT and BAT Settlement Payment amounts for APS to run concurrently with any extension of the Leases and Grants. If the Parties are not able to reach agreement upon new PIT and BAT Settlement Payment amounts before expiration of the Amended Term, the Parties will either continue this Restated Agreement in effect with the PIT and BAT Settlement Payment amounts set forth in Section 1 above, or either Party may elect to terminate this Restated Agreement.

b. The Parties recognize and agree that, upon termination or expiration of this Restated Agreement for any reason, (i) each Party has preserved all of its rights and arguments regarding the question of the jurisdictional authority of the Navajo Nation and ONTC to tax the Facilities and/or APS and its successors and assigns based on ownership interests in and operation of the Facilities; (ii) this Restated Agreement shall not in any way be deemed a waiver or amendment of any provisions of any agreement between the Navajo Nation, APS and/or any of the Participants, including but not limited to the Leases and Grants; and (iii) neither Party may assert any claim, demand, damages, action, cause of action, or suit of whatsoever kind and nature, whether known or unknown to the Parties, or whether asserted or unasserted, related, either directly or indirectly, to any and all PIT and BAT tax assessments and taxes, and interest and penalties thereon, that arose or may have arisen while this Restated Agreement was in effect.

14. No Third Party Beneficiaries.

Nothing herein, either express or implied is intended or may be construed to confer upon or to give to any person or entity other than the Parties any rights or remedies under or by reason of this Restated Agreement.

15. Limited Responsibility.

The Parties acknowledge and agree that it is their mutual intent that the obligations, representations, warranties and undertakings under this Restated Agreement or as a result of the transactions contemplated by this Restated Agreement are limited to only those expressly set forth herein, and not enlarged by implication, creation of law, or otherwise.

16. Survival.

The provisions of Sections 2(a) and (b), 4, 7 and 13.b of this Restated Agreement survive expiration or termination of this Restated Agreement. Provided that the Restated Agreement remains in effect through the Amended Term, APS' obligation to make the calendar year 2041 PIT Settlement Payment specified in this Restated Agreement and APS' obligation to make BAT Settlement Payments for any periods prior to expiration or termination of this Restated Agreement also shall survive expiration or termination of this Restated Agreement.

17. Notices.

Notices shall be deemed to have been given if in writing and (a) hand delivered, (b) delivered by a reputable overnight courier service (such as but not limited to FedEx and UPS), (c) mailed by certified or registered mail, return receipts requested, first class postage prepaid, or (d) transmitted by telecopy or electronic mail, followed within 24 hours by transmittal under option (a), (b) or (c) above addressed as follows:

If to ONTC:

President
The Navajo Nation
P.O. Box 9000
Window Rock, Arizona 86515

With a copy to:

Attorney General
Navajo Nation Department of Justice
P.O. Drawer 2010

Window Rock, Arizona 86515

Executive Director
Office of the Navajo Tax Commission
P.O. Box 1903
Window Rock, Arizona 86515

If to APS:

Arizona Public Service Corporation
400 North 5th Street
Phoenix, Arizona 85004
Attn: Corporate Secretary

With a copy to:

Pinnacle West Capital Corporation
400 North 5th Street
Phoenix, Arizona 85004
Attn: Executive Vice President and General Counsel

or at such other address as the Parties may, from time to time, designate in writing. Service by overnight courier or mail shall be deemed made on the first business day delivery is attempted or upon receipt, whichever is earlier. Service by telecopy or electronic mail shall be deemed made upon confirmed transmission.

18. Effective Date; Effect of this Restated Agreement.

This Restated Agreement is effective upon the date when duly executed by both Parties (the "**Effective Date**"). It is the Parties' intention that through the Effective Date of this Restated Agreement, the terms and conditions of the Original Agreement in effect at the date of execution of this Restated Agreement shall continue to govern the Parties' rights and obligations thereunder. Upon and after the Effective Date of this Restated Agreement, the Parties' right and obligations shall be governed by the terms and conditions of this Restated Agreement.

By signing, the undersigned certify that they have read and agreed to the terms of this Restated Agreement.

ARIZONA PUBLIC SERVICE COMPANY

By: _____
Donald G. Robinson
President

Date _____

NAVAJO NATION

By: _____
Martin Ashley, Executive Director
Office of the Navajo Tax Commission

Date _____

APPROVED:

By: _____
Louis Denetsosie, Attorney General
Navajo Nation Department of Justice

Date _____

AMENDMENT AND SUPPLEMENT NO. 3
TO
SUPPLEMENTAL AND ADDITIONAL INDENTURE OF LEASE
BETWEEN
THE NAVAJO NATION
AND
ARIZONA PUBLIC SERVICE COMPANY,
EL PASO ELECTRIC COMPANY,
PUBLIC SERVICE COMPANY OF NEW MEXICO,
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,
AND
TUCSON ELECTRIC POWER COMPANY

Dated: March 7, 2011

**AMENDMENT AND SUPPLEMENT NO. 3 TO
SUPPLEMENTAL AND ADDITIONAL INDENTURE OF LEASE**

This Amendment and Supplement No. 3 to the Supplemental and Additional Indenture of Lease dated March 7, 2011 (this "Amendment") is by and between the Navajo Nation (formerly known as The Navajo Tribe of Indians), acting through the Navajo Nation Council for and on behalf of the Navajo Nation (hereinafter referred to as the "Nation"), as lessor, and Arizona Public Service Company ("APS"), El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, and Tucson Electric Power Company (formerly known as Tucson Gas & Electric Company) (hereinafter, collectively, together with their successors and assigns, referred to as the "Lessees," and each individually referred to as a "Lessee"). The Nation and the Lessees are hereinafter collectively referred to as the "Parties."

The Parties agree as follows:

1 BACKGROUND.

- 1.1 APS has leased certain premises from the Nation under that certain Indenture of Lease dated December 1, 1960 between APS and the Nation, as supplemented and amended by that certain Supplemental and Additional Indenture of Lease dated July 6, 1966, between the Nation, APS, and the other Lessees, as further supplemented and amended by that certain Amendment and Supplement No. 1 to Supplemental and Additional Indenture of Lease dated April 25, 1985, between the Nation, APS and the other Lessees (the "1985 Lease Supplement"; and such Indenture of Lease, as supplemented and amended, the "1960 Lease").
- 1.2 Lessees have leased certain premises from the Nation under that certain Supplemental and Additional Indenture of Lease dated July 6, 1966, between the Nation, Southern California Edison Company ("SCE"), and the Lessees, as

supplemented and amended by the 1985 Lease Supplement (such Supplemental and Additional Indenture of Lease, as supplemented and amended, the “1966 Lease”).

- 1.3 The Parties desire to extend the respective terms of and otherwise amend the 1960 Lease and the 1966 Lease to reflect certain new terms and conditions.
- 1.4 The 1960 Lease and the 1966 Lease are amended only as set forth in this Amendment. To the extent, however, that there is any conflict between the 1960 Lease and this Amendment or the 1966 Lease and this Amendment, this Amendment shall govern.
- 1.5 This Amendment is not intended to and does not merge the leasehold estates of the 1960 Lease and the 1966 Lease, or the rights, liabilities, or obligations (collectively, “Rights”) of the Parties set forth in the 1960 Lease and the 1966 Lease. Further, in no event shall the Lessees (except for APS) have any Rights under the 1960 Lease or with respect to the leasehold estate demised to APS under the 1960 Lease. Rather, except for APS, all the Lessees’ Rights are limited only to the Four Corners Project, as set forth in the 1966 Lease.

2 **DEFINITIONS.**

- 2.1 “§ 323 Grant” or “§ 323 Grants” - One or more grants of rights-of-way and easements under the Act of February 5, 1948 (62 Stat. 17, 18, 25 U.S.C. §323-328), the Act of March 3, 1879 (20 Stat. 394, 5 U.S.C. § 485), as amended, and the Acts of July 9, 1832, and July 27, 1868 (4 Stat. 564, 15 Stat. 228. 25 U.S.C. §2) and such regulations promulgated thereunder, as are applicable, including 25 C.F.R. §1.2 and 25 C.F.R. Part 169.
- 2.2 “§ 323 Grant Land” - Has the meaning set forth in Section 5.2.

- 2.3 “Affiliate” - With respect to any Lessee hereto, any entity, including but not limited to a corporation, company, partnership, LLC/LLP or joint venture that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Lessee. For purposes of this definition, the term “control” (including “controlled by” and “under common control with”) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, regardless of percentage by written contract, or otherwise.
- 2.4 “Annual Payment” - Except for (i) payments owed to the Nation under the existing Settlement and Closing Agreements that the Nation has executed with each individual Lessee (ii) the payments that will be owed to the Nation under the Settlement and Closing Agreements set forth in Section 14; (iii) the negotiation premium set forth in Section 3.4; and (iv) the payment set forth in Section 4.5, the total and sole payment that shall be made by (X) APS to the Nation, in consideration for the rights set forth in the 1960 Lease, including, but not limited to, (a) all leasehold rights, (b) the Existing § 323 Grants, and (c) the Renewed § 323 Grants; and by (Y) the Lessees to the Nation, in consideration for the rights set forth in the 1966 Lease, including, but not limited to, (a) all leasehold rights, (b) the Existing § 323 Grants, and (c) the Renewed § 323 Grants.
- 2.5 “Communication Sites” - The communication sites and related facilities identified within item 5 of Exhibit B.
- 2.6 “Existing § 323 Grants” - The § 323 Grants set forth on Exhibit B.
- 2.7 “Four Corners Project” - Has the meaning set forth in the 1966 Lease.
- 2.8 “Initial Four Corners Plant” - Has the meaning set forth in the 1966 Lease.

- 2.9 “Plan” - Has the meaning set forth in Section 7.1.
- 2.10 “Plant” - For convenience only, and not to merge the leasehold estates under the 1960 Lease and the 1966 Lease, a reference to the Initial Four Corners Plant and the Four Corners Project, respectively.
- 2.11 “Renewed § 323 Grants” - Has the meaning set forth in Section 4.2.
- 2.12 “Navajo Nation Lands” - Has the meaning set forth in the 1966 Lease for the term “Reservation Lands.”
- 2.13 “Secretary” - The Secretary of the United States Department of the Interior or his or her duly authorized designee, representative, or successor.
- 2.14 “Transmission Lines” - The electrical transmission lines and related facilities identified within items 3 and 4 of Exhibit B.

3 **TERM.**

- 3.1 This Amendment shall become effective (the “Amendment Effective Date”) upon the earlier of SCE’s sale of its interest in the Four Corners Project or July 6, 2016 (the “Amendment 2 Termination Date,” as defined in the Amendment and Supplement No. 2 to the Supplemental and Additional Indenture of Lease, attached as Exhibit A).
- 3.2 The Navajo Nation Council Resolution approving this Amendment, and signature by the Nation’s duly authorized representative, shall be deemed to be sufficient legal approval by the Nation of this Amendment.
- 3.3 The 1960 Lease and the 1966 Lease (and the Annual Payments payable thereunder) are extended to July 6, 2041, whether or not the Initial Four Corners Plant or the Four Corners Project are operating or the Renewed § 323 Grants are terminated.

- 3.4 The Nation will engage in good-faith negotiations for an additional extension of both the 1960 Lease and the 1966 Lease beyond 2041, provided that such negotiations begin no later than July 2029 and conclude by July 2031. Any mutual agreement to continue the negotiations beyond July 2031, which such negotiations are not successfully completed, will extend the term of both the 1960 Lease and the 1966 Lease equally beyond July 2041, provided that (i) the negotiation extension period shall not exceed three years; and (ii) APS with respect to the 1960 Lease and the Lessees with respect to the 1966 Lease shall pay the Nation a pre-negotiated premium (above the Annual Payment) for the period the negotiations are extended.

4 **NATION'S CONSENT TO § 323 GRANTS BY SECRETARY FOR THE PLANT, TRANSMISSION LINES, AND COMMUNICATION SITES.**

- 4.1 The Nation has previously consented to, and the Secretary has granted, the Existing § 323 Grants, and the renewal, extension or reissuance of each Existing § 323 Grant will be necessary.
- 4.2 The Nation consents and covenants to consent now, and for the terms of each of the 1960 Lease and the 1966 Lease (collectively, "Consents"), that the Lessees shall have the right to obtain, by grant from the Secretary, and the Nation Consents to the grant by the Secretary, of renewed, extended, or reissued § 323 Grants for the rights-of-way covered in the Existing § 323 Grants. (Such renewed, extended, or reissued § 323 Grants are referred to as the "Renewed § 323 Grants").
- 4.3 The Nation and Lessees will cooperate fully with each other and the Secretary to obtain the Renewed § 323 Grants.

- 4.4 The Navajo Nation Council Resolution approving this Amendment shall be deemed to be sufficient legal approval by the Nation for the Renewed § 323 Grants. No further consideration shall be required by the Nation in order for the Secretary to issue the Renewed § 323 Grants.
- 4.5 The Lessees shall provide the Nation a copy of applications for the Renewed § 323 Grants, and each application shall be accompanied by a payment of no more than \$800 per application.
- 4.6 The Existing § 323 Grants and the Renewed § 323 Grants shall be additional and supplementary to, separate and independent from, and not conditioned upon the leasehold rights leased to APS under the 1960 Lease and to the Lessees under the 1966 Lease; and a termination of either the 1960 Lease or the 1966 Lease for any reason shall not terminate any §323 Grant, and a termination of any § 323 Grant for any reason, shall not terminate the 1960 Lease or the 1966 Lease.
- 4.7 The Nation agrees to support the renewal, extension, or reissuance of the Existing § 323 Grants as categorically excluded under section 3.2A of the Bureau of Indian Affairs' 2005 National Environmental Policy Act Handbook. If the Secretary determines that additional environmental impact analysis is required, the Nation hereby grants Lessees access to all Navajo Nation Lands necessary to complete such additional analysis. Lessees will work with the appropriate Navajo Nation agencies to effectuate any necessary access to any Navajo Nation Lands. The Nation also agrees to assist the Lessees in completing such analysis and to take reasonable actions to reduce the time and cost required to complete such analysis.
- 4.8 Except as set forth in the 1960 Lease, APS shall not change the voltages of the Transmission Lines without the Nation's prior approval.

- 4.9 Under no circumstances shall any § 323 Grant be interpreted as granting a fee simple interest to the Lessees or any other property interest, except as set forth in the § 323 Grant.

5 **ADDITIONAL TERMS REGARDING § 323 GRANTS FOR TRANSMISSION LINES.**

- 5.1 The provisions of Section 5.2 through Section 5.7 and Section 10 and Section 12 below constitute a separate agreement between the Nation and APS. In no event shall any default, action or omission by APS under Section 5.2 through Section 5.7, Section 10, or Section 12 below have any effect on any other Parties' rights, privileges, duties, obligations and liabilities under the remainder of this Amendment.
- 5.2 The Navajo Nation Lands subject to an Existing § 323 Grant or a Renewed § 323 Grant and pertaining only to the Transmission Lines shall hereinafter be referred to as "§ 323 Grant Land."
- 5.3 The use of the § 323 Grant Land shall be strictly limited to constructing, reconstructing, replacing, repairing, operating and maintaining the Transmission Lines. Any other use of the § 323 Grant Land shall require the consent of the Nation. The consent of the Nation may be given, given upon conditions, or denied at the sole discretion of the Nation.
- 5.4 The Nation shall be under no obligation to forego the use of the § 323 Grant Land or any portion or lands burdened by the § 323 Grant Land, or to refrain from authorizing any use of said lands by any third party, including but not limited to, the exploration for and development and transportation of coal, oil, gas, or other natural resources located within or beneath said lands, except to the extent that

such use physically interferes with the operation and maintenance of the Transmission Lines or interferes with the purposes of the § 323 Grants.

- 5.5 Upon the Nation's proposed authorization of the use of the § 323 Grant Lands by any third party, which new use may occupy the § 323 Grant Lands or otherwise burden the § 323 Grant Lands, the Nation agrees to notify APS and commence good faith consultation with APS prior to the Nation's final approval of said third party use. Prior to the Nation's final approval, the Nation shall require the third party to enter into an agreement with APS, which agreement must be acceptable to APS, to indemnify, defend, and hold APS harmless from any and all liability arising from the third party's use, interest, and activities within the § 323 Grant Land.
- 5.6 Five years prior to the expiration of a Renewed § 323 Grant, or as soon as practicable after any earlier termination of a Renewed § 323 Grant, APS and the Nation shall meet to discuss whether APS will leave in place all, some, or none of the Transmission Lines. If APS and the Nation cannot agree to terms regarding the disposition of one or more of the Transmission Lines, APS shall remove the Transmission Line(s) for which no agreement is reached, in accordance with the Lease and applicable laws and requirements, and shall leave the § 323 Grant Land in good condition. On the expiration date of a Renewed § 323 Grant, APS shall have ninety (90) days to peaceably and without legal process deliver the possession of the § 323 Grant Land, with or without the Transmission Lines, as the case may be. In the event a Renewed § 323 Grant is terminated early, APS shall have six months to peaceably and without legal process deliver the possession of the § 323 Grant Land for such terminated § 323 Grant, with or without the Transmission Lines, as the case may be. If delivery cannot be

performed on or before such 90-day period or six month period, as the case may be, APS and the Nation shall commence good faith negotiations for compensation, fees or damages to be paid to the Nation for prospective periods of occupation, use, or burden of the § 323 Grant Lands.

5.7 Holding over by APS after the expiration or early termination of a Renewed § 323 Grant shall not constitute an extension/renewal thereof, or give APS any rights in or to the § 323 Grant Lands. Holding over after expiration or early termination of a Renewed § 323 Grant shall not give APS any rights via a Renewed § 323 Grant. Following expiration or early termination of a § 323 Grant, the act of applying for a § 323 Grant from the Secretary shall not give APS any rights to the § 323 Grant land.

6 **NATION'S SUPPORT OF ENVIRONMENTAL REVIEWS AND § 323 GRANTS.** The Nation shall work with the Lessees to obtain the necessary regulatory approvals and to advocate on behalf of the Lessees in support of any National Environmental Policy Act, Endangered Species Act, or National Historic Preservation Act analyses; § 323 renewals or extensions; or any other requirements of the Department of the Interior ("DOI") or the Nation that are prerequisites necessary to conduct the operations of the Plant, Transmission Lines, and Communication Sites. In its interactions with the DOI, the Nation shall support the interests of the Lessees and advocate positions that support the continued operations of the Plant, Transmission Lines, and Communication Sites.

7 **EMPLOYMENT AT THE FOUR CORNERS GENERATING STATION.**

Section 19 of the 1960 Lease, Section 24 of the 1966 Lease and Section 25 of the 1966 Lease (as amended by Section 12 of the 1985 Lease Supplement) are deleted in their entirety and replaced as follows:

- 7.1 Without limiting the scope or effectiveness of the provisions of Section 17 of the 1960 Lease (Operation of Power Plant) or Section 22 of the 1966 Lease (Operation of Enlarged Four Corners Generating Station), APS and the Lessees shall comply with the terms of the Four Corners Generating Station Preference Plan (the “Plan”), attached as Exhibit C.
- 7.2 In the event that, in the opinion of their counsel, federal law develops in the future, to permit APS and the Lessees, respectively, to grant a preference in employment based on tribal affiliation, as distinguished from a “Native American Indian” preference in employment, APS and the Lessees shall practice a Navajo preference in employment at the Plant in accordance with the requirements of this Section 7 and the Plan.
- 7.3 If, at any time, APS’s then current Collective Bargaining Agreement (which governs labor at the Plant), as negotiated by APS, in its sole discretion, conflicts with this Section 7 or the Plan, then APS’s Collective Bargaining Agreement shall take precedence.

8 **ADVISORY COMMITTEE.**

APS, the Lessees, and the Nation shall establish a Four Corners Advisory Committee for the purpose of promoting open dialogue between them regarding operations of the Plant.

- 8.1 The Committee shall consist of two members of the Navajo Nation Government with experience in energy-related matters, one from the executive and one from

the legislative branch, and two senior officials representing APS and the Lessees, who shall be tasked to work together and in consultation with their respective leaderships to resolve concerns raised by APS and the Lessees or the Nation in a mutually beneficial manner.

The Committee shall meet regularly, but no less than two times a year. Discussion topics and updates may include voluntary compliance agreements, the impact of plant operations on the Nation's members and surrounding communities and emerging issues.

- 8.2 APS and the Lessees or the Nation may submit disagreements and disputes to the Committee for discussion and possible resolution. Decisions of the Committee shall be in the nature of recommendations and shall not be binding on APS and the Lessees or the Nation.

9 **ANNUAL PAYMENT.**

- 9.1 The Annual Payment shall replace all compensation for rents, rights of way, or otherwise, set forth in the § 323 Grants (as to the § 323 Grant Land), the 1960 Lease and the 1966 Lease, as applicable. All sections of the aforementioned documents imposing a payment obligation on APS and the Lessees are hereby deleted.
- 9.2 The Annual Payment shall be \$7,000,000, as adjusted from the April 2011 CPI (defined below), and shall begin on the Amendment Effective Date. All subsequent Annual Payments shall be subject to annual adjustments, based upon changes in the April Consumer Price Index U.S. City Average for All Urban Consumers, published by the U.S. Bureau of Labor Statistics ("CPI"). The annual CPI adjustment for the Annual Payment shall be as set forth in Exhibit D.

- 9.3 On or before July 6 of each year, APS and the Lessees shall submit one check for the Annual Payment to the Nation and indicate the adjustment required by the CPI.
- 9.4 No Lessee shall be responsible or liable to the Nation for the payment of any portion of such Annual Payment of any other Lessee. In the event that one or more Lessees fails to pay the Nation its portion of such Annual Payment at the time such Annual Payment is submitted to the Nation, APS (or the then operator of the Plant) shall inform the Nation of the name of the Lessee(s) failing to make the Annual Payment and the specific amount of each such Lessee's shortfall. In the event the Nation incurs costs associated with obtaining the required Annual Payment owed, the Nation shall be entitled to recover from the defaulting Lessee(s) its associated costs, including, but not limited to, attorney's fees, filing fees and interest accrued. A list of each Lessee's portion of the Annual Payment shall be provided to the Nation.
- 9.5 The Nation agrees that the Annual Payment payable by APS and the Lessees constitutes fair and adequate consideration for the rights granted in the 1960 Lease, the 1966 Lease, the Existing § 323 Grants and the Renewed § 323 Grants.
- 9.6 Upon agreement between the Lessees, the percentage of the Annual Payment owed by each of APS and the Lessees, respectively, may be changed without the consent of the Nation. But in no event shall the amount due be less than 100% of the Annual Payment, as calculated in accordance with Section 9.2. In the event of a change in payment percentages, an updated list of each Lessee's portion of the Annual Payment shall be provided to the Nation. In consideration of the Annual Payment made by APS and the Lessees, respectively, the Nation releases APS and the Lessees from all and any kind of claims, suits, actions, causes of action, rights,

liabilities, and obligations (the aforementioned, collectively referred to as “Claims”), whether past, present, or future, known or unknown, for or related to compensation due under the 1960 Lease or 1966 Lease, or compensation for the Existing § 323 Grants and the Renewed § 323 Grants.

9.7 In consideration of the Annual Payment made by APS and the Lessees, respectively, the Nation releases APS and the Lessees from and settles all outstanding issues and potential Claims, under the 1960 Lease or 1966 Lease, or under the Existing § 323 Grants.

Notwithstanding the foregoing, the release set forth in this Section 9.7 shall not apply to any claims arising under Section 10 of this Amendment.

9.8 APS and the Lessees release the Nation from and settle all outstanding issues and potential Claims under the 1960 Lease or the 1966 Lease, or under the Existing § 323 Grants.

Notwithstanding the foregoing, the release set forth in this Section 9.8 shall not apply to any claims arising under Section 10 of this Amendment.

10 **APS’S 230kV LINES.**

APS and the Nation disagree as to whether the provisions of Section 17 of the 1960 Lease (Operation of Power Plant) or Section 22 of the 1966 Lease (Operation of Enlarged Four Corners Generating Station) apply to the Existing §323 Grants listed on Exhibit B for the 230kV lines identified as (a) Flagstaff to Leupp and (b) Cholla to Leupp (collectively, the “Leupp Lines”).

APS and the Nation each reserve the right to assert that the aforementioned sections apply or do not apply to the Leupp Lines, as the case may be.

11 **DECOMMISSIONING.**

Upon the decommissioning of the Initial Four Corners Plant, the Four Corners Project or any part of either facility, the final decommissioning obligations of APS as to the Initial Four Corners Plant and of the Lessees as to the Four Corners Project shall be limited to

the requirements under the applicable federal environmental laws existing at the time of such decommissioning. All or any part of any such decommissioning may occur at any time during the term of either the 1960 Lease or the 1966 Lease, as applicable.

12 **MOENKOPI SUBSTATION.**

In the event that there is a future expansion of the Moenkopi Substation, it shall be subject to an increase in APS's portion of the Annual Payment by \$1500 per acre (in April 2009 dollars) for up to 100 acres. The \$1500 per acre payment shall be adjusted annually by the CPI (in April 2009 dollars). The expansion shall be subject to all applicable regulatory requirements.

13 **ASSIGNMENTS.**

The second paragraph of Section 19 of the 1966 Lease is deleted and replaced as follows: Except as set forth in the first paragraph of Section 19 of the 1966 Lease and in Section 9.6 of this Amendment, and except for any assignment, sublease or other transfer by a Lessee to its Affiliate, all other assignments, subleases, or other transfers of rights (including operating rights) of APS related to the 1960 Lease or the Lessees related to the 1966 Lease shall be subject to the prior written consent of the Nation, which consent shall not be unreasonably withheld, nor conditioned on any payments or changes to the terms and conditions of the respective leases, other than nominal administration fees.

14 **SETTLEMENT AND CLOSING AGREEMENTS.**

Each Party shall execute a new Settlement and Closing Agreement in form and substance substantially similar to the proposed sample Settlement and Closing Agreement attached as Exhibit

F. Once executed, the Settlement and Closing Agreement will be effective as of July 6, 2016.

15 **NO CROSS DEFAULT.**

Notwithstanding anything to the contrary in this Amendment, the 1960 Lease or the 1966 Lease, a default by APS under the 1960 Lease, as amended by this Amendment, shall not constitute a default by Lessees under the 1966 Lease, and a default by Lessees under the 1966 Lease, as amended by this Amendment, shall not constitute a default by APS under the 1960 Lease.

16 **PRIMARY FUEL.**

The primary fuel used at the Plant shall be coal.

17 **THIRD PARTY BENEFICIARIES.**

The 1960 Lease and the 1966 Lease are not intended to confer upon any third person any rights, privileges, waivers, obligations, or remedies granted hereunder. If, on or before July 6, 2018, SCE has sold its share of the Four Corners Project ("SCE's Share"), the Nation agrees that, without any additional consent or compensation, such buyer(s) of SCE's Share ("Buyers") shall (a) automatically, upon the closing of such a sale, become a Lessee(s) under the 1966 Lease and (2) assume the portion of the Annual Payment attributable to SCE's Share. Upon the closing of such transaction, all such Buyers shall be express third party beneficiaries under this Section 17, and such Buyers and the Nation shall have first party rights to enforce full performance of this Section 17 against each other.

18 **EXECUTION IN COUNTERPARTS.**

This Amendment may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all of the Parties to the aggregate counterparts had signed the same instrument. Any signature page of this Amendment may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon, and may be attached to other

counterparts of this Amendment identical in form hereto but having attached to it one or more additional signature pages.

This Amendment has been executed by the duly authorized representatives of the Parties, effective as of the Amendment Effective Date.

THE NAVAJO NATION

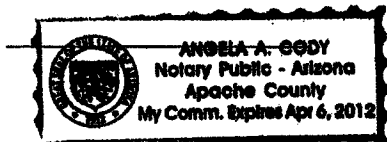
By: Ben Shelly
Printed Name: Ben Shelly
Its: President

State of Arizona
County of Apache

The foregoing instrument was acknowledge before me this 7th day of March, 2011 by Ben Shelly
(Name)
the PRESIDENT of THE NAVAJO NATION, on
(Title)
behalf of The Navajo Nation.

Angela Gody
Notary Public

My Commission Expires:



ARIZONA PUBLIC SERVICE
COMPANY, an Arizona corporation, in its
individual capacity and as a Lessee

By: _____
Printed Name: _____
Its: _____

State of Arizona
County of Maricopa

The foregoing instrument was acknowledge before me this _____ day of _____, 20__ by _____
(Name)
the _____ of ARIZONA PUBLIC SERVICE
(Title)
COMPANY, an Arizona corporation, on behalf of the corporation.

This Amendment has been executed by the duly authorized representatives of the Parties,
effective as set forth in Section 3.1.

THE NAVAJO NATION

By: _____

Printed Name: _____

Its: _____

State of Arizona

County of _____

The foregoing instrument was acknowledge before me this _____ day of
_____, 20__ by _____
(Name)
the _____ of THE NAVAJO NATION, on
(Title)
behalf of The Navajo Nation.

Notary Public

My Commission Expires:

**ARIZONA PUBLIC SERVICE
COMPANY**, an Arizona corporation, in its
individual capacity and as a Lessee

By: Mark A. Schiavoni

Printed Name: MARK A. SCHIAVONI

Its: Senior Vice President, Fossil

State of Arizona

County of Maricopa

The foregoing instrument was acknowledge before me this 8th day of
November, 2010 by Mark A. Schiavoni
(Name)
the Senior Vice President, Fossil of ARIZONA PUBLIC SERVICE
(Title)
COMPANY, an Arizona corporation, on behalf of the corporation.

Norann Ascutto
Notary Public

My Commission Expires:

2-27-14



Notary Public

My Commission Expires:

~~Reviewed and Approved~~
Legal Department

[Signature]

EL PASO ELECTRIC COMPANY, a
Texas corporation

By: [Signature]

Printed Name: David W. Stevens

Its: CEO

State of Texas

County of El Paso

The foregoing instrument was acknowledge before me this 8th day of
November, 2010 by David W. Stevens
the CEO of EL PASO ELECTRIC
(Name)
(Title)
COMPANY, a Texas corporation, on behalf of the corporation.

[Signature]
Notary Public

My Commission Expires:

3-24-2011



PUBLIC SERVICE COMPANY OF
NEW MEXICO, a New Mexico
corporation

By: _____

Printed Name: _____

Its: _____

State of New Mexico

County of _____

The foregoing instrument was acknowledge before me this _____ day of
_____, 20__ by _____
the _____ of PUBLIC SERVICE
(Name)
(Title)
COMPANY OF NEW MEXICO, a New Mexico corporation, on behalf of the corporation.

Notary Public

EL PASO ELECTRIC COMPANY, a
Texas corporation

By: _____

Printed Name: _____

Its: _____

State of Texas

County of _____

The foregoing instrument was acknowledge before me this _____ day of
_____, 20__ by _____
the _____ (Name)
_____, (Title) of EL PASO ELECTRIC
COMPANY, a Texas corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

PUBLIC SERVICE COMPANY OF
NEW MEXICO, a New Mexico
corporation

By: Patricia K. Callahan

Printed Name: Patricia K. Callahan

Its: President - CEO

State of New Mexico

County of Bernalillo

The foregoing instrument was acknowledge before me this 8th day of
November, 2010 by Patricia K. Callahan
the President - CEO (Name)
_____, (Title) of PUBLIC SERVICE
COMPANY OF NEW MEXICO, a New Mexico corporation, on behalf of the corporation.

Shirley H. Smith
Notary Public

My Commission Expires:

My Commission Expires:

September 12, 2012

**TUCSON ELECTRIC POWER
COMPANY, an Arizona Corporation**

By: _____

Printed Name: _____

Its: _____

State of Arizona

County of _____

The foregoing instrument was acknowledge before me this _____ day of
_____, 20__ by _____

the _____ of **TUCSON ELECTRIC**
(Name)
(Title)

POWER COMPANY, an Arizona corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

**TUCSON ELECTRIC POWER
COMPANY, an Arizona Corporation**

By: *Michael J. DeCine*

Printed Name: Michael J. DeCine

Its: Senior Vice President and
Chief Operating Officer

State of Arizona

County of Pima

The foregoing instrument was acknowledge before me this 8th day of
November, 2010 by Michael J. DeCine

(Name)

the Sr. Vice President + Chief Operating Officer of TUCSON ELECTRIC
(Title)

POWER COMPANY, an Arizona corporation, on behalf of the corporation.

Janice Spencer
Notary Public

My Commission Expires:

8/8/11

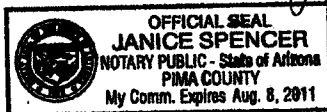


Exhibit A
(Attachments Not Included)

AMENDMENT AND SUPPLEMENT NO. 2

TO

SUPPLEMENTAL AND ADDITIONAL INDENTURE OF LEASE

BETWEEN

THE NAVAJO NATION

AND

ARIZONA PUBLIC SERVICE COMPANY,

EL PASO ELECTRIC COMPANY,

PUBLIC SERVICE COMPANY OF NEW MEXICO,

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER
DISTRICT,

SOUTHERN CALIFORNIA EDISON COMPANY

AND

TUCSON ELECTRIC POWER COMPANY

Dated: March 7, 2011

AMENDMENT AND SUPPLEMENT NO. 2 TO SUPPLEMENTAL AND ADDITIONAL INDENTURE OF LEASE

This Amendment and Supplement No. 2 to the Supplemental and Additional Indenture of Lease dated March 7, 2011 (this "Amendment") is by and between the Navajo Nation (formerly known as The Navajo Tribe of Indians), acting through the Navajo Nation Council, for and on behalf of the Navajo Nation (hereinafter referred to as the "Nation"), as lessor, and Arizona Public Service Company ("APS"), El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company ("Edison"), and Tucson Electric Power Company (formerly known as Tucson Gas & Electric Company) (hereinafter, collectively, together with their successors and assigns, referred to as the "Lessees," and each individually referred to as a "Lessee"). The Nation and the Lessees are hereinafter collectively referred to as the "Parties."

The Parties agree as follows:

1 BACKGROUND.

- 1.1 APS has leased certain premises from the Nation under that certain Indenture of Lease dated December 1, 1960 between APS and the Nation, as supplemented and amended by that certain Supplemental and Additional Indenture of Lease dated July 6, 1966, between the Nation, APS and the other Lessees, as further supplemented and amended by that certain Amendment and Supplement No. 1 to Supplemental and Additional Indenture of Lease dated April 25, 1985, between the Nation, APS and the other Lessees (the "1985 Lease Supplement"; and such Indenture of Lease, as supplemented and amended, the "1960 Lease").
- 1.2 Lessees have leased certain premises from the Nation under that certain Supplemental and Additional Indenture of Lease dated July 6, 1966, between the Nation and the Lessees, as supplemented and amended by the 1985 Lease

Supplement (such Supplemental and Additional Indenture of Lease, as supplemented and amended, the "1966 Lease").

- 1.3 The Parties desire to amend the 1960 Lease and the 1966 Lease to reflect certain new terms and conditions.
- 1.4 Edison does not intend to remain a participant in the Four Corners Project after July 2016. Accordingly, Edison intends to end its tenancy under the Lease upon the earlier of the sale of its interest in the Four Corners Project or July 6, 2016. The date on which Edison ends its tenancy, as set forth in the preceding sentence, is referred to as the "Amendment 2 Termination Date."
- 1.5 Upon the Amendment 2 Termination Date, this Amendment shall terminate.
- 1.6 The 1960 Lease and the 1966 Lease are amended only as set forth in this Amendment. To the extent, however, that there is any conflict between the 1960 Lease and this Amendment or the 1966 Lease and this Amendment, this Amendment shall govern.
- 1.7 This Amendment is not intended to and does not merge the leasehold estates of the 1960 Lease and the 1966 Lease, or the rights, liabilities, or obligations (collectively, "Rights") of the Parties set forth in the 1960 Lease and the 1966 Lease. Further, in no event shall the Lessees (except for APS) have any Rights under the 1960 Lease or with respect to the leasehold estate demised to APS under the 1960 Lease. Rather, except for APS, all the Lessees' Rights are limited only to the Four Corners Project, as set forth in the 1966 Lease.

2 DEFINITIONS.

- 2.1 "§ 323 Grant" or "§ 323 Grants" - One or more grants of rights-of-way and easements under the Act of February 5, 1948 (62 Stat. 17, 18, 25 U.S.C. § 323-328), the Act of March 3, 1879 (20 Stat. 394, 5 U.S.C. § 485), as amended, and the Acts of July 9, 1832, and July 27, 1868 (4 Stat. 564, 15 Stat. 228. 25 U.S.C. § 2) and such regulations promulgated thereunder, as are applicable, including 25 C.F.R. § 1.2 and 25 C.F.R. Part 169.
- 2.2 "§ 323 Grant Land" - Has the meaning set forth in Section 5.2.

- 2.3 "Annual Payment"- Except for (i) payments owed to the Nation under the existing Settlement and Closing Agreements that the Nation has executed with each individual Lessee, (ii) payments that will be owed to the Nation under the Settlement and Closing Agreements set forth in Section 14, and (iii) the payment set forth in Section 4.5, the total and sole payment that shall be made by (X) APS to the Nation, in consideration for the rights set forth in the 1960 Lease, including, but not limited to, (a) all leasehold rights, (b) the Existing § 323 Grants, and (c) the Renewed § 323 Grants; and by (Y) the Lessees to the Nation, in consideration for the rights set forth in the 1966 Lease, including, but not limited to, (a) all leasehold rights, (b) the Existing § 323 Grants, and (c) the Renewed § 323 Grants.
- 2.4 "Communication Sites" - The communication sites and related facilities identified within item 5 of Exhibit B.
- 2.5 "Existing § 323 Grants"-The § 323 Grants set forth on Exhibit B.
- 2.6 "Four Corners Project"- Has the meaning set forth in the 1966 Lease.
- 2.7 "Initial Four Corners Plant" - Has the meaning set forth in the 1966 Lease.
- 2.8 "Plan" - Has the meaning set forth in Section 7.1.
- 2.9 "Plant"- For convenience only, and not to merge the leasehold estates under the 1960 Lease and the 1966 Lease, a reference to the Initial Four Corners Plant and the Four Corners Project, respectively.
- 2.10 "Renewed § 323 Grants"- Has the meaning set forth in Section 4.2.

- 2.11 "Navajo Nation Lands" - Has the meaning set forth in the 1966 Lease for the term "Reservation Lands."
- 2.12 "Secretary" - The Secretary of the United States Department of the Interior or his or her duly authorized designee, representative, or successor.
- 2.13 "Transmission Lines" - The electrical transmission lines and related facilities identified within items 3 and 4 of Exhibit B.

3 **TERM.**

- 3.1 This Amendment shall become effective when it has been signed by the Lessees and subsequently signed by the Nation's duly authorized representative, pursuant to a Navajo Nation Council Resolution approving this Amendment.
- 3.2 The Navajo Nation Council Resolution approving this Amendment, and signature by the Nation's duly authorized representative, shall be deemed to be sufficient legal approval by the Nation of this Amendment.
- 3.3 This Amendment shall terminate on the Amendment 2 Termination Date.
- 3.4 In the event this Amendment terminates as a result of the arrival of July 6, 2016, Edison shall not be relieved of any of its continuing or accrued and unfulfilled or unperformed obligations to the Nation under the 1966 Lease, and Edison shall retain all of its rights under the 1966 Lease with respect to such continuing obligations.

4 **NATION'S CONSENT TO § 323 GRANTS BY SECRETARY FOR THE PLANT, TRANSMISSION LINES, AND COMMUNICATION SITES.**

- 4.1 The Nation has previously consented to, and the Secretary has granted, the Existing § 323 Grants, and the renewal, extension or reissuance of each Existing § 323 Grant will be necessary.

- 4.2 The Nation consents and covenants to consent now, and for the terms of each of the 1960 Lease and the 1966 Lease (collectively, "Consents"), that the Lessees shall have the right to obtain, by grant from the Secretary, and the Nation Consents to the grant by the Secretary, of renewed, extended, or reissued § 323 Grants for the rights-of-way covered in the Existing § 323 Grants. (Such renewed, extended, or reissued § 323 Grants are referred to as the "Renewed § 323 Grants").
- 4.3 The Nation and Lessees will cooperate fully with each other and the Secretary to obtain the Renewed § 323 Grants.
- 4.4 The Navajo Nation Council Resolution approving this Amendment shall be deemed to be sufficient legal approval by the Nation for the Renewed § 323 Grants. No further consideration shall be required by the Nation in order for the Secretary to issue the Renewed § 323 Grants.
- 4.5 The Lessees shall provide the Nation a copy of applications for the Renewed § 323 Grants, and each application shall be accompanied by a payment of no more than \$800 per application.
- 4.6 The Existing § 323 Grants and the Renewed § 323 Grants shall be additional and supplementary to, separate and independent from, and not conditioned upon the leasehold rights leased to APS under the 1960 Lease and to the Lessees under the 1966 Lease; and a termination of either the 1960 Lease or the 1966 Lease for any reason shall not terminate any § 323 Grant, and a termination of any § 323 Grant for any reason, shall not terminate the 1960 Lease or the 1966 Lease.
- 4.7 The Nation agrees to support the renewal, extension, or reissuance of the Existing § 323 Grants as categorically excluded under section 3.2A of the Bureau of Indian Affairs' 2005 National Environmental Policy Act Handbook. If the Secretary

determines that additional environmental impact analysis is required, the Nation hereby grants Lessees access to all Navajo Nation Lands necessary to complete such additional analysis.

Lessees will work with the appropriate Navajo Nation agencies to effectuate any necessary access to any Navajo Nation Lands. The Nation also agrees to assist the Lessees in completing such analysis and to take reasonable actions to reduce the time and cost required to complete such analysis.

4.8 Except as set forth in the 1960 Lease, APS shall not change the voltages of the Transmission Lines without the Nation's prior approval.

4.9 Under no circumstances shall any § 323 Grant be interpreted as granting a fee simple interest to the Lessees or any other property interest, except as set forth in the § 323 Grant.

5 **ADDITIONAL TERMS REGARDING § 323 GRANTS FOR TRANSMISSION LINES.**

5.1 The provisions of Section 5.2 through Section 5.7, Section 11, and Section 13 below constitute a separate agreement between the Nation and APS. In no event shall any default, action or omission by APS under Section 5.2 through Section 5.7, Section 11, or Section 13 below have any effect on any other Parties' rights, privileges, duties, obligations and liabilities under the remainder of this Amendment.

5.2 The Navajo Nation Lands subject to an Existing § 323 Grant or a Renewed § 323 Grant and pertaining only to the Transmission Lines shall hereinafter be referred to as "§ 323 Grant Land."

5.3 The use of the § 323 Grant Land shall be strictly limited to constructing, reconstructing, replacing, repairing, operating and maintaining the Transmission Lines. Any other use of the § 323 Grant Land shall require the consent of the

Nation. The consent of the Nation may be given, given upon conditions, or denied at the sole discretion of the Nation.

- 5.4 The Nation shall be under no obligation to forego the use of the § 323 Grant Land or any portion or lands burdened by the § 323 Grant Land, or to refrain from authorizing any use of said lands by any third party, including but not limited to, the exploration for and development and transportation of coal, oil, gas, or other natural resources located within or beneath said lands, except to the extent that such use physically interferes with the operation and maintenance of the Transmission Lines or interferes with the purposes of the § 323 Grants.
- 5.5 Upon the Nation's proposed authorization of the use of the § 323 Grant Lands by any third party, which new use may occupy the § 323 Grant Lands or otherwise burden the § 323 Grant Lands, the Nation agrees to notify APS and commence good faith consultation with APS prior to the Nation's final approval of said third party use. Prior to the Nation's final approval, the Nation shall require the third party to enter into an agreement with APS, which agreement must be acceptable to APS, to indemnify, defend, and hold APS harmless from any and all liability arising from the third party's use, interest, and activities within the §323 Grant Land.
- 5.6 Five years prior to the expiration of a Renewed § 323 Grant, or as soon as practicable after any earlier termination of a Renewed § 323 Grant, APS and the Nation shall meet to discuss whether APS will leave in place all, some, or none of the Transmission Lines. If APS and the Nation cannot agree to terms regarding the disposition of one or more of the Transmission Lines, APS shall remove the Transmission Line(s) for which no agreement is reached, in accordance with the Lease and applicable laws and requirements, and shall leave the § 323 Grant Land

in good condition. On the expiration date of a Renewed § 323 Grant, APS shall have ninety (90) days to peaceably and without legal process deliver the possession of the § 323 Grant Land, with or without the Transmission Lines, as the case may be. In the event a Renewed § 323 Grant is terminated early, APS shall have six months to peaceably and without legal process deliver the possession of the § 323 Grant Land for such terminated § 323 Grant, with or without the Transmission Lines, as the case may be. If delivery cannot be performed on or before such 90-day period or six month period, as the case may be, APS and the Nation shall commence good faith negotiations for compensation, fees or damages to be paid to the Nation for prospective periods of occupation, use, or burden of the § 323 Grant Lands.

- 5.7 Holding over by APS after the expiration or early termination of a Renewed § 323 Grant shall not constitute an extension/renewal thereof, or give APS any rights in or to the § 323 Grant Lands. Holding over after expiration or early termination of a Renewed § 323 Grant shall not give APS any rights via a Renewed § 323 Grant. Following expiration or early termination of a § 323 Grant, the act of applying for a § 323 Grant from the Secretary shall not give APS any rights to the § 323 Grant land.

6 NATION'S SUPPORT OF ENVIRONMENTAL REVIEWS AND § 323 GRANTS.

The Nation shall work with the Lessees to obtain the necessary regulatory approvals and to advocate on behalf of the Lessees in support of any National Environmental Policy Act, Endangered Species Act, or National Historic Preservation Act analyses; § 323 renewals or extensions; or any other requirements of the Department of the Interior ("DOI") or the Nation that are prerequisites necessary to conduct the operations of the Plant, Transmission Lines, and Communication Sites. In its interactions with the DOI,

the Nation shall support the interests of the Lessees and advocate positions that support the continued operations of the Plant, Transmission Lines, and Communication Sites.

7 **EMPLOYMENT AT THE FOUR CORNERS GENERATING STATION.**

Section 19 of the 1960 Lease, Section 24 of the 1966 Lease and Section 25 of the 1966 Lease (as amended by Section 12 of the 1985 Lease Supplement) are deleted in their entirety and replaced as follows:

- 7.1. Without limiting the scope or effectiveness of the provisions of Section 17 of the 1960 Lease (Operation of Power Plant) or Section 22 of the 1966 Lease (Operation of Enlarged Four Corners Generating Station), APS and the Lessees shall comply with the terms of the Four Corners Generating Station Preference Plan (the "Plan"), attached as Exhibit C.
- 7.2 In the event that, in the opinion of their counsel, federal law develops in the future to permit APS and the Lessees, respectively, to grant a preference in employment based on tribal affiliation, as distinguished from a "Native American Indian" preference in employment, APS and the Lessees shall practice a Navajo preference in employment at the Plant in accordance with the requirements of this Section 7 and the Plan.
- 7.3 If, at any time, APS's then current Collective Bargaining Agreement (which governs labor at the Plant), as negotiated by APS in its sole discretion, conflicts

with this Section 7 or the Plan, then APS's Collective Bargaining Agreement shall take precedence.

8 ADVISORY COMMITTEE.

APS, the Lessees, and the Nation shall establish a Four Corners Advisory Committee for the purpose of promoting open dialogue between them regarding operations of the Plant.

8.1 The Committee shall consist of two members of the Navajo Nation Government with experience in energy-related matters, one from the executive and one from the legislative branch, and two senior officials representing APS and the Lessees, who shall be tasked to work together and in consultation with their respective leaderships to resolve concerns raised by APS and the Lessees or the Nation in a mutually beneficial manner. The Committee shall meet regularly, but no less than two times a year. Discussion topics and updates may include voluntary compliance agreements, the impact of plant operations on the Nation's members and surrounding communities and emerging issues.

8.2 APS and the Lessees or the Nation may submit disagreements and disputes to the Committee for discussion and possible resolution. Decisions of the Committee shall be in the nature of recommendations and shall not be binding on APS and the Lessees or the Nation.

9 ANNUAL PAYMENT.

9.1 The Annual Payment shall replace all compensation for rents, rights of way, or otherwise, set forth in the § 323 Grants (as to the § 323 Grant Land), the 1960 Lease and the 1966 Lease, as applicable. All sections of the aforementioned documents imposing a payment obligation on APS and the Lessees are hereby deleted.

- 9.2 The Annual Payment, which shall be \$7,000,000 (in 2011 dollars), shall begin on July 6, 2011. All subsequent Annual Payments shall be subject to annual adjustments, based upon changes in the April Consumer Price Index U.S. City Average for All Urban Consumers, published by the U.S. Bureau of Labor Statistics ("CPI"). The annual CPI adjustment for the Annual Payment shall be as set forth in Exhibit D.
- 9.3 On or before July 6 of each year, APS and the Lessees shall submit one check for the Annual Payment to the Nation and indicate the adjustment required by the CPI.
- 9.4 No Lessee shall be responsible or liable to the Nation for the payment of any portion of such Annual Payment of any other Lessee. In the event that one or more Lessees fails to pay the Nation its portion of such Annual Payment at the time such Annual Payment is submitted to the Nation, APS (or the then operator of the Plant) shall inform the Nation of the name of the Lessee(s) failing to make the Annual Payment and the specific amount of each such Lessee's shortfall. In the event the Nation incurs costs associated with obtaining the required Annual Payment owed, the Nation shall be entitled to recover from the defaulting Lessee(s) its associated costs, including, but not limited to, attorney's fees, filing fees and interest accrued. A list of each Lessee's portion of the Annual Payment shall be provided to the Nation.
- 9.5 The Nation agrees that the Annual Payment payable by APS and the Lessees constitutes fair and adequate consideration for the rights granted in the 1960 Lease, the 1966 Lease, the Existing § 323 Grants and the Renewed § 323 Grants.
- 9.6 Upon agreement between the Lessees, the percentage of the Annual Payment owed by each of APS and the Lessees, respectively, may be changed without the

consent of the Nation. But in no event shall the amount due be less than 100% of the Annual Payment, as calculated in accordance with Section 9.2. In the event of a change in payment percentages, an updated list of each Lessee's portion of the Annual Payment shall be provided to the Nation.

9.7 In consideration of the Annual Payment made by APS and the Lessees, respectively, the Nation releases APS and the Lessees from all and any kind of claims, suits, actions, causes of action, rights, liabilities, and obligations (the aforementioned, collectively referred to as "Claims"), whether past, present, or future, known or unknown, for or related to compensation due under the 1960 Lease or 1966 Lease, or compensation for the Existing § 323 Grants and the Renewed § 323 Grants. In consideration of the Annual Payment made by APS and the Lessees, respectively, the Nation releases APS and the Lessees from and settles all outstanding issues and potential Claims, under the 1960 Lease or 1966 Lease, or under the Existing § 323 Grants. Notwithstanding the foregoing, the release set forth in this Section 9.7 shall not apply to any claims arising under Section 11 of this Amendment.

9.8 APS and the Lessees release the Nation from and settle all outstanding issues and potential Claims under the 1960 Lease or the 1966 Lease, or under the Existing § 323 Grants. Notwithstanding the foregoing, the release set forth in this Section 9.8 shall not apply to any claims arising under Section 11 of this Amendment.

10 **SURVEY OF PLANT.**

10.1 APS and the Lessees and the Nation agree that part of the Annual Payment is based on their understanding that the Plant Site and the Ancillary Facilities, as identified within items 1 and 2 of Exhibit B (the "Plant Property"), comprise a

total of 3,663 acres (3,600 acres, with an upper margin of error of 63 acres) (the "Expected Plant Property Acreage").

- 10.2 APS and the Nation agree that part of APS's share of the Annual Payment is based on their understanding that the § 323 Grant Land comprises 10,000 acres (9839.40 acres, with an upper margin of error of 172 acres) (the "Expected § 323 Grant Land Acreage").
- 10.3 APS, for the § 323 Grant Land, and APS and the Lessees, for the Plant Property, shall conduct surveys of the § 323 Grant Land and the Plant Property, respectively, within twelve months for the § 323 Grant Land, and six months for the Plant Property, after the effective date of this Amendment. The Nation hereby grants APS and the Lessees access to all Navajo Nation Lands necessary to complete such surveys, and APS and the Lessees will work with the appropriate Nation agencies to effectuate any necessary access to any Navajo Nation Lands. The actual acres for the Plant Property and the § 323 Grant Land, as determined in such surveys, shall each be referred to as the "Actual Acreage." If the Actual Acreage for the Plant Property exceeds the Expected Plant Property Acreage, or if the Actual Acreage for the § 323 Grant Land exceeds the Expected § 323 Grant Land Acreage, then Section 10.4 and, if necessary, Section 10.5 shall apply. If Section 10.4 does not apply, there shall be no adjustment to the Annual Payment and no other compensation shall be due to the Nation.
- 10.4 If the Actual Acreage for the Plant Property exceeds the Expected Plant Property Acreage, or if the Actual § 323 Grant Land Acreage exceeds the Expected § 323 Grant Land Acreage, APS (individually) or APS and the Lessees, as the case may be, shall have 90 days to cure and reduce the respective Actual Acreages to at or below the Expected Plant Property Acreage or Expected § 323 Grant Land

Acreage, as the case may be. If the Actual Acreages are reduced accordingly, there shall be no adjustment to the Annual Payment and no other compensation shall be due to the Nation.

10.5 For any Actual Acreage in excess of the Expected Plant Property Acreage or Expected § 323 Grant Land Acreage that APS (individually) or APS and the Lessees fail or choose not to cure, the Annual Payment shall be adjusted in the next Annual Payment as follows: (a) for each one acre the Actual Acreage of the Plant Property exceeds the Expected Plant Property Acreage, the Annual Payment shall increase by \$269, adjusted annually by the CPI (in 2011 dollars); and (b) for each one acre the Actual Acreage of the § 323 Grant Land exceeds the Expected § 323 Grant Land Acreage, the Annual Payment payable by APS shall increase by \$612, adjusted annually by the CPI (in 2011 dollars).

10.6 Any adjusted Annual Payment shall be prospective only, and there shall be no true-up required for previous Annual Payments, and the Nation shall have no claims against the Lessees for additional liabilities or compensation for historic use of the Plant Property or the § 323 Grant Land related to property survey inaccuracies.

10.7 The respective surveys will not be used to acquire additional or different lands beyond what the surveys demonstrate comprise the current boundaries of the Plant Property or the § 323 Grant Lands.

11 APS'S 230kV LINES.

APS and the Nation disagree as to whether the provisions of Section 17 of the 1960 Lease (Operation of Power Plant) or Section 22 of the 1966 Lease (Operation of Enlarged Four Corners Generating Station) apply to the Existing §323 Grants listed on Exhibit B for the 230kV lines identified as (a) Flagstaff to Leupp and (b) Cholla to Leupp (collectively, the

"Leupp Lines"). APS and the Nation each reserve the right to assert that the aforementioned sections apply or do not apply to the Leupp Lines, as the case may be.

12 **DECOMMISSIONING.**

Upon the decommissioning of the Initial Four Corners Plant, the Four Corners Project or any part of either facility, the final decommissioning obligations of APS as to the Initial Four Corners Plant and of the Lessees as to the Four Corners Project shall be limited to the requirements under the applicable federal environmental laws existing at the time of such decommissioning. All or any part of any such decommissioning may occur at any time during the term of either the 1960 Lease or the 1966 Lease, as applicable.

13 **MOENKOPI SUBSTATION.**

In the event that there is a future expansion of the Moenkopi Substation, it shall be subject to an increase in APS's portion of the Annual Payment by \$1500 per acre (in April 2009 dollars) for up to 100 acres. The \$1500 per acre payment shall be adjusted annually by the CPI (in April 2009 dollars). The expansion shall be subject to all applicable regulatory requirements.

14 **SETTLEMENT AND CLOSING AGREEMENTS.**

Except for Edison, each Party shall execute a new Settlement and Closing Agreement in form and substance substantially similar to the proposed sample Settlement and Closing Agreement attached as Exhibit F.

15 **NO CROSS DEFAULT.**

Notwithstanding anything to the contrary in this Amendment, the 1960 Lease or the 1966 Lease, a default by APS under the 1960 Lease, as amended by this Amendment, shall not constitute a default by Lessees under the 1966 Lease, and a default by Lessees under the 1966 Lease, as amended by this Amendment, shall not constitute a default by APS under the 1960 Lease.

16 **PRIMARY FUEL.**

The primary fuel used at the Plant shall be coal.

17 **NO THIRD PARTY BENEFICIARIES.**

The 1960 Lease and the 1966 Lease are not intended to confer upon any third person any rights, privileges, waivers, obligations, or remedies granted hereunder.

18 **EXECUTION IN COUNTERPARTS.**

This Amendment may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all of the Parties to the aggregate counterparts had signed the same instrument. Any signature page of this Amendment may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon, and may be attached to other counterparts of this Amendment identical in form hereto but having attached to it one or more additional signature pages.

This Amendment has been executed by the duly authorized representatives of the Parties,
effective as set forth in Section 3.1.

THE NAVAJO NATION

By: Ben Shelly

Printed Name: Ben Shelly

Its: President

State of Arizona

County of Apache

The foregoing instrument was acknowledge before me this 7th day of
March, 2011 by Ben Shelly

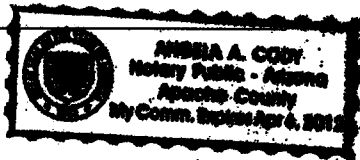
(Name)

the PRESIDENT of THE NAVAJO NATION, on
(Title)

behalf of The Navajo Nation.

Angela Coady
Notary Public

My Commission Expires:



ARIZONA PUBLIC SERVICE

COMPANY, an Arizona corporation, in its
individual capacity and as a Lessee

By: _____

Printed Name: _____

Its: _____

State of Arizona

County of Maricopa

The foregoing instrument was acknowledge before me this _____ day of
_____, 20__ by _____

(Name)

the _____ of ARIZONA PUBLIC SERVICE
(Title)

COMPANY, an Arizona corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

This Amendment has been executed by the duly authorized representatives of the Parties,
effective as set forth in Section 3.1.

THE NAVAJO NATION

By: _____

Printed Name: _____

Its: _____

State of Arizona

County of _____

The foregoing instrument was acknowledge before me this _____ day of
_____, 20__ by _____
the _____ of THE NAVAJO NATION, on
(Name)
(Title)
behalf of The Navajo Nation.

Notary Public

My Commission Expires:

**ARIZONA PUBLIC SERVICE
COMPANY**, an Arizona corporation, in its
individual capacity and as a Lessee

By: Mark A. Schiavoni

Printed Name: MARK A. SCHIAVONI

Its: Senior Vice President, Fossil

State of Arizona

County of Maricopa

The foregoing instrument was acknowledge before me this 30th day of
November, 2010 by Mark A. Schiavoni
the Senior Vice President, Fossil of ARIZONA PUBLIC SERVICE
(Name)
(Title)
COMPANY, an Arizona corporation, on behalf of the corporation.

Morann Ascuitto
Notary Public

My Commission Expires:

2-27-14



~~Reviewed and Approved~~
Legal f

[Signature]

EL PASO ELECTRIC COMPANY, a
Texas corporation

By: [Signature]

Printed Name: David W. Stevens

Its: CEO

State of Texas

County of El Paso

The foregoing instrument was acknowledge before me this 8th day of
November, 2010 by David W. Stevens

(Name)
the CEO of EL PASO ELECTRIC
(Title)

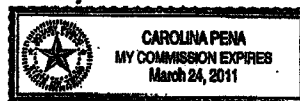
COMPANY, a Texas corporation, on behalf of the corporation.

[Signature]

Notary Public

My Commission Expires:

3-24-2011



PUBLIC SERVICE COMPANY OF
NEW MEXICO, a New Mexico
corporation

By: _____

Printed Name: _____

Its: _____

State of New Mexico

County of _____

The foregoing instrument was acknowledge before me this _____ day of
_____, 20__ by _____

(Name)
the _____ of PUBLIC SERVICE
(Title)

COMPANY OF NEW MEXICO, a New Mexico corporation, on behalf of the corporation.

Notary Public

My Commission Expires: