

**ELECTRICAL DISTRICT NO. 3
BILL CREDITING AGREEMENT FOR PREFERENCE POWER**

The parties to this Agreement are ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY, ARIZONA, hereinafter called "ED3" and the CITY OF MARICOPA, hereinafter called "Customer." In consideration of the services to be performed by ED3, the parties agree as follows:

1. SPECIFICATION

- a. Customer has entered into an agreement with the Arizona Power Authority ("APA") to receive capacity and energy ("preference power") from the Hoover Dam delivered per contract with APA in Attachment B.
- b. ED3 shall supply, and Customer shall take, all electric service required for operation of Customer's facilities listed on Attachment A, subject to the physical limitations of ED3's existing system.
- c. ED3 will schedule the preference power received from APA.
- d. In accordance with Rider No. 09 Preference Power Rider (PPR) in Attachment C, ED3 will provide a bill credit to the Customer's account for the preference power. Credit for received Preference Power will be applied to the Customer's bill in accordance with ED3's Rider No. 09. ED3 will credit Customer's monthly electric bill per monthly APA power schedule and per the applicable PPR.
- e. Bill credits shall be applied in accordance with the applicable ED3 PPR Rider No. 09 and ED3 Electric Service Guidelines ("Guidelines") which are incorporated herein as Attachment D. The Guidelines may change from time to time and such changes made to the Guidelines shall amend and apply to this Agreement to the same extent as though they had been originally incorporated as a part of this Agreement.

2. TERM OF AGREEMENT

- a. The term of this Agreement shall be for a period of two years (the "Initial Term") with an effective date of October 1, 2017. Thereafter, this Agreement shall be automatically extended until either party gives the other party at least thirty (30) days prior written notice of its desire to terminate this Agreement.

3. GENERAL PROVISIONS

- a. In the event that either party shall successfully bring suit to compel performance or for breach of this Agreement, that party shall be entitled to recover reasonable attorney's fees in addition to the amount of judgment and costs.
- b. A waiver of any default of the other party or any other matter arising in connection with this Agreement, at any time by either party, shall not be construed as a waiver of any subsequent default or matter.
- c. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, REPRESENTATIONS, OR WARRANTIES, EXPRESSED OR IMPLIED (INCLUDING WARRANTIES REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), NOT SPECIFIED IN THIS AGREEMENT, THE REFERENCED SCHEDULES, ANY OTHER REFERENCED OR ATTACHED DOCUMENTS, CONCERNING THE SALE AND DELIVERY OF ELECTRICITY BY ED3 TO CUSTOMER. THIS AGREEMENT, WHICH INCORPORATES THE REFERENCED SCHEDULES, ANY OTHER REFERENCED OR ATTACHED DOCUMENTS STATES THE ENTIRE OBLIGATION OF ED3-IN CONNECTION WITH SUCH SALES AND DELIVERIES.

- d. City and ED3 shall exert all efforts to perform their respective responsibilities under this Agreement. However, neither party shall hold the other party responsible for inability to render timely performance if such inability is a direct result of a force beyond its control, including but not limited to the following: strikes, lockouts, embargoes, failure of carriers, inability to obtain transportation facilities, acts of God or the public enemy, or other events beyond the control of the other or the other's employees and agents.
- e. The failure of City or ED3 to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.
- f. ED3 shall at all times during ED3's performance of the services retain ED3's status as independent contractor. ED3's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or ED3.
- g. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by ED3 and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and ED3 shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the City and ED3. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.
- h. The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.
- i. Neither party to this Agreement shall assign its interest in the Agreement, either in whole or in part.
- j. This Agreement and any attachments represent the entire agreement between City and ED3 and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided,

however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

- k. If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.
- l. The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this contract.
- m. Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. ED3 acknowledges, by signature to this Agreement, that: ED3 is not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions; ED3's principals are not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions.
- n. ED3 understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986. ED3 hereby warrants to City that ED3 and each of its subcontractors, if any, will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees.
- o. ED3 warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has an interest, financially or otherwise, in ED3. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation to be paid ED3 hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

4. EXECUTION

This Agreement has been; executed by authorized representatives of the parties, as set forth below.

CITY OF MARICOPA	ELECTRICAL DISTRICT NO. 3 OF PINAL COUNTY ARIZONA
Signature:	Signature:
_____	_____
Signed By: <i>Please Print:</i>	Signed By: <i>Please Print:</i> W. H. Stacy
_____	_____
Title: <i>Please Print:</i>	Title: <i>Please Print:</i> CEO / General Manager
_____	_____
Date:	Date:
_____	_____

ATTACHMENT A
TO BILL CREDITING AGREEMENT FOR PREFERENCE POWER
BETWEEN
ELECTRICAL DISTRICT No. 3 ("ED3")
AND THE CITY OF MARICOPA ("CUSTOMER")

Primary Account: Located at 44315 W. Martin Luther King Blvd, Account Number 6000425-058

Back-Up Account: Located at 44345 W. Martin Luther King Blvd., Account Number 6000425-061

ATTACHMENT B
TO BILL CREDITING AGREEMENT FOR PREFERENCE POWER
BETWEEN
ELECTRICAL DISTRICT No. 3 ("ED3")
AND THE CITY OF MARICOPA ("CUSTOMER")

Contract between APA and COM

ATTACHMENT C
TO ELECTRIC SUPPLY AGREEMENT, CUSTOMERS WITH PREFERENCE POWER
BETWEEN
ELECTRICAL DISTRICT No. 3 ("ED3")
AND THE CITY OF MARICOPA ("CUSTOMER")

Rider No. 09, Preference Power Rider.

ATTACHMENT D
TO ELECTRIC SUPPLY AGREEMENT, CUSTOMERS WITH PREFERENCE POWER
BETWEEN
ELECTRICAL DISTRICT No. 3 (“ED3”)
AND THE CITY OF MARICOPA (“CUSTOMER”)

ED3 Electric Service Guidelines.