

ORIGINAL



0000118829

RECEIVED
THE ARIZONA CORPORATION COMMISSION

2010 OCT 15 A 9:34

KRISTIN K. MAYES

Chairman

GARY PIERCE

Commissioner

PAUL NEWMAN

Commissioner

SANDRA D. KENNEDY

Commissioner

BOB STUMP

Commissioner

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

OCT 15 2010

DOCKETED BY
[Signature]

IN THE MATTER OF THE APPLICATION
OF HUALAPAI VALLEY SOLAR LLC, IN
CONFORMANCE WITH THE
REQUIREMENTS OF ARIZONA REVISED
STATUTES §§ 40-360.03 AND 40-360.06,
FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY
AUTHORIZING CONSTRUCTION OF
THE HVS PROJECT, A 340 MW
PARABOLIC TROUGH CONCENTRATING
SOLAR THERMAL GENERATING
FACILITY AND AN ASSOCIATED
GEN-TIE LINE INTERCONNECTING
THE GENERATING FACILITY TO THE
EXISTING MEAD-PHOENIX 500kV
TRANSMISSION LINE, THE MEAD-
LIBERTY 345kV TRANSMISSION LINE
OR THE MOENKOPI-EL DORADO
500kV TRANSMISSION LINE.

Docket No. L-00000NN-09-0541-00151

Case No. 151

**HUALAPAI VALLEY
SOLAR'S COMPLIANCE
FILING AND ANNUAL SELF-
CERTIFICATION**

At its March 31, 2010 Open Meeting, the Arizona Corporation Commission
("Commission") voted to conditionally approve a Certificate of Environmental
Compatibility ("CEC") for Hualapai Valley Solar LLC ("HVS") to build a 340 MW solar
generating facility in Mohave County (the "Project") (Decision No. 71648, April 14,
2010). The Commission then stayed its decision to allow for an A.R.S. § 40-252

1 proceeding to entertain requests for intervention and hold supplemental evidentiary
2 hearings on June 15 and 16, 2010.

3 Since the Commission decision granting a conditional CEC, HVS has taken steps in
4 response to the conditions imposed on the CEC by the Commission. This filing provides
5 an update to the Commission on those efforts and will also serve as the first self-
6 certification annual report required by condition 21 should the Commission choose to lift
7 the stay and allow HVS to proceed with the Project.
8

9 CEC conditions 2 and 3 require HVS to obtain all approvals and comply with all
10 other existing laws and rules relevant to the Project. To that end, HVS has continued the
11 National Environmental Policy Act ("NEPA") process in conjunction with Western Area
12 Power Administration ("Western"). This NEPA process is necessary because the Project
13 will interconnect with Western's transmission system. HVS has made progress with
14 Western on an interconnection to the 345kV Mead-Liberty transmission line (Western is
15 now beginning the design of the Project's switchyard), including filing an application with
16 Western for long-term transmission service. In addition, the Project's effluent pipeline
17 right-of-way is also being studied as part of this NEPA process.
18

19 CEC condition 4 requires HVS to make all reasonable efforts to minimize the use
20 of groundwater and to use effluent for cooling. To that end, HVS and the City of
21 Kingman ("City") have exchanged several drafts of an effluent contract. There have been
22 a number of meetings and telephone conversations to discuss the terms of this contract.
23 The City is offering to sell HVS 900,000 gallons per day of effluent initially. The City's
24
25
26

1 wastewater treatment plant can be expanded for future growth, providing the potential for
2 more effluent sales to HVS in the future. HVS has also identified multiple pipeline routes
3 and reviewed them with the City and Mohave County. HVS now expects a final contract
4 will be reviewed by the City Council in November 2010.
5

6 Furthermore, the Project's engineering team has identified two technologies that are
7 being incorporated into the design of the Project. The Project's Decarbonization Plant and
8 Brine Treatment Plant will both serve to reduce the amount of groundwater and total water
9 used to cool the Project. Other techniques and technologies that would further minimize
10 the use of groundwater continue to be evaluated.
11

12 Condition 17 requires HVS to participate in state and regional transmission study
13 forums. HVS has participated in the ACC Biennial Transmission Assessment process and
14 has attended other regional planning meetings, including the ARRTIS and WestConnect
15 meetings.
16

17 Conditions 22 and 23 direct HVS to report on Mohave County and Arizona
18 economic development impacts related to the Project. To that end, HVS has entered into a
19 memorandum of understanding with the Hualapai Tribe to co-develop renewable energy
20 projects on Hualapai Tribal Land, and to develop a plan for interconnection of the
21 Hualapai projects at the Project's interconnection site. A copy of the MOU is attached.
22 Western's Transmission Infrastructure Project (TIP) office has initiated a transmission
23 upgrade project that identifies the Project as the "anchor tenant," which is necessary to
24 support the proposed Hualapai Tribe wind and solar projects. The Applicant has also
25
26

1 pledged to assist in the training and hiring of members of the Tribe during construction
2 and operation of the Project.

3 HVS has retained more than twenty Arizona companies, including eight Mohave
4 County companies, during the planning and permitting phase. HVS expects most of these
5 Arizona companies, along with additional Arizona companies, to provide goods or
6 services during construction as well.

7
8 Conditions 27 and 28 require HVS to continue to partner with Mohave County
9 workforce development personnel and to enter good faith discussions with the Arizona
10 Building Trades Council. To that end, HVS has participated in the following Mohave
11 County workforce development programs: the Coalition Youth Team (COYOTE) youth
12 summer job program; the Joint Technological Education District (JTED) and the Western
13 Arizona Vocational Education (WAVE) district; the Mohave/La Paz Local Workforce
14 Investment Board; and the Mohave County Energy Careers Alliance. HVS also co-
15 sponsored a Renewable Energy Job Fair held at Kingman High School.

16
17 In addition, HVS has had numerous meetings and discussions with representatives
18 of the Arizona Building Trades Council (“BTC”) and three of its member unions, and has
19 offered to enter into a Memorandum of Understanding (“MOU”). A copy of that MOU is
20 attached. The BTA has not been willing to sign the MOU, but instead has insisted that the
21 expected EPC contractor execute a “conditional contract” with BTC, despite the fact that
22 HVS has not yet concluded its negotiations with that potential EPC contractor.
23
24
25
26

1 In addition to its ongoing negotiations with the BTC, the Applicant has had many
2 meetings with union and non-union contractors throughout Mohave County and Arizona
3 over the past 18 months, and has mailed Pre-Qualification Questionnaires to 112 Mohave
4 County and Arizona contractors and suppliers who have expressed interest in the Project.
5

6 HVS has also progressed with this Project in several other respects:

7 1. In furtherance of its application with the Department of Energy (“DOE”) for
8 federal financial support for the project, HVS filed the final update of its application with
9 DOE’s Loan Guarantee Program office on September 17, 2010.
10

11 2. HVS submitted a proposal and participated in negotiations with NV Energy
12 to purchase all the output of this Project and expects to receive a final response from NV
13 Energy by the end of the year.
14

15 3. Currently, HVS is negotiating an EPC contract with a highly experienced
16 power plant construction company and operator. HVS anticipates that this EPC contract
17 will be finalized before the end of the year.

18 4. In September, Western hosted a Kick-Off Meeting for a transmission system
19 upgrade project that was proposed by HVS. The upgrade project will support multiple
20 renewable energy projects being considered and developed in Mohave County, and would
21 be administered and funded by Western’s TIP office. Western has identified the HVS
22 Project as the “anchor tenant” in this upgrade project, for its advanced stage of
23 development and long-term transmission service agreement. The TIP team is studying the
24 feasibility of interconnecting multiple projects (including the Hualapai Tribe projects
25
26

1 being co-developed with HVS) at a common interconnection point along the Mead-Liberty
2 345kV system.

3 RESPECTFULLY submitted this 15th day of October, 2010.

4
5 LEWIS AND ROCA LLP

6
7 

8 Thomas H. Campbell
9 Albert H. Acken
10 Matthew G. Bingham
40 N. Central Avenue
Phoenix, Arizona 85007
Attorneys for Hualapai Valley Solar LLC

11 ORIGINAL and twenty (20) copies of the
12 foregoing filed this 15th day of October, 2010, with:

13 The Arizona Corporation Commission
14 Utilities Division – Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007

15 COPY of the foregoing hand delivered
16 this 15th day of October, 2010, to:

17 Chairman Kristin K. Mayes
18 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

19 Commissioner Gary Pierce
20 Arizona Corporation Commission
1200 W. Washington Street
21 Phoenix, Arizona 85007

22 Commissioner Paul Newman
23 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

24 Commissioner Sandra D. Kennedy
25 Arizona Corporation Commission
1200 W. Washington Street
26 Phoenix, Arizona 85007

- 1 Commissioner Bob Stump
2 Arizona Corporation Commission
3 1200 W. Washington Street
4 Phoenix, Arizona 85007
- 5 Sarah N. Harpring, Administrative Law Judge
6 Arizona Corporation Commission
7 1200 W. Washington Street
8 Phoenix, Arizona 85007
- 9 Charles Hains, Legal Division
10 Arizona Corporation Commission
11 1200 W. Washington Street
12 Phoenix, Arizona 85007
- 13 Steve Olea, Director
14 Utilities Division
15 Arizona Corporation Commission
16 1200 W. Washington Street
17 Phoenix, Arizona 85007
- 18 Arizona Department of Commerce
19 Energy Office
20 1700 W. Washington Street
21 Suite 220
22 Phoenix, Arizona 85007
- 23 **COPY** of the foregoing served electronically
24 this 15th day of October, 2010 to:
- 25 John Foreman, Chairman
26 Arizona Power Plant and Transmission Line Siting Committee
Office of the Attorney General
PAD/CPA
1275 W. Washington Street
Phoenix, Arizona 85007
John.Foreman@azag.gov
- Susan A. Moore-Bayer
7656 West Abrigo Drive
Golden Valley, Arizona 86413
rbbdci@frontiernet.net
- Timothy M. Hogan
Arizona Center for Law in the Public Interest
2020 E. McDowell Road, Suite 153
Phoenix, Arizona 85004
Attorney for Denise Herring-Bensusan
Thogan@aclpi.com

1 Robert A. Taylor
2 Mohave County Attorneys Office
3 P.O. Box 7000
4 Kingman, Arizona 86402
5 Robert.Taylor@mohave.az.us

6 *Betty J. Griffin*
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ATTACHMENT 1

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "Agreement"), dated as of May 27, 2010 (the "Effective Date"), is made by and between Mohave Sun Power LLC, a Delaware limited liability company ("MSP"), and the Hualapai Tribe, a federally recognized Indian tribe (the "Tribe") each a "Party" and together the "Parties").

RECITALS

WHEREAS, the Hualapai Reservation (the "Reservation"), located in northwestern Arizona and generally comprising the geographical areas indicated as the Hualapai Reservation on the map attached hereto as Exhibit A, may contain sites having the characteristics necessary for solar energy generation facilities ("Solar Sites"); and

WHEREAS, MSP has an interest in cooperating with the Tribe to study the Solar Sites and their characteristics to determine if such sites have the potential for development of solar energy generating facilities (such potential development projects collectively, the "Solar Projects"); and

WHEREAS, the Tribe, either on its own or with persons or entities other than MSP, is developing non-solar renewable energy generation facilities (collectively, "Non-Solar Projects"); and

WHEREAS, MSP has an interest in cooperating with the Tribe to study and explore the Solar Projects and Non-Solar Projects to determine if any of them have the potential for transmission to, and shared interconnection with, MSP's Hualapai Valley Solar Project and/or any future MSP developments located on non-Reservation land (such potential projects collectively, the "Interconnection Projects"); and

WHEREAS, the Parties have agreed to enter into this Agreement for the purposes of conducting due diligence, project feasibility studies and other pre-construction development tasks on the Reservation and to cooperate with the Tribe in creating proposals for external grant funding, as further described herein; and

WHEREAS, if any of the Solar Projects, Non-Solar Projects, or Interconnection Projects (collectively, the "Projects") are deemed by the Parties to be feasible and mutually desirable, the Parties intend to (i) form a joint venture development company jointly owned by the Tribe and MSP, (ii) enter into a separate, binding and definitive agreement (such, a "Project Agreement") concerning the development of each such Project, and (iii) if and as agreed by the Parties, form one or more project companies to administer and manage such Projects. The Parties understand, intend and agree that the Project Agreements, if any, will contain terms setting forth a greater level of detail and specificity regarding the relationship between the Parties (and their respective rights and responsibilities) than may be set forth in this Agreement.

NOW THEREFORE, that in consideration of the promises set forth herein and for other valuable consideration, the receipt and sufficiency thereof is hereby acknowledged, the Parties hereto covenant and agree as follows:

1) Binding Agreement to Proceed with Feasibility Study

- a) MSP shall conduct a feasibility study on the Reservation ("Feasibility Study"), which MSP shall complete no later than six (6) months after the Effective Date (such six-month period, the "Feasibility Period"). As reasonably requested by MSP, the Tribe shall participate in the Feasibility Study, and cooperate with and provide assistance to MSP in connection therewith. Any Project relating to, or the subject of, the Feasibility Study may be referred to herein as a "Study Project."
- b) The Feasibility Study shall be conducted with respect to two potential Projects for purposes of determining whether such Study Projects are potentially feasible from a technical, economic and regulatory standpoint: (i) an Interconnection Project related to a Non-Solar Project (i.e., a currently planned wind generation facility on the Reservation), and (ii) a Solar Project (i.e., a currently un-sited photovoltaic solar generation facility on the Reservation). Under the Feasibility Study, MSP, in conjunction with the Tribe, shall review and assess the feasibility of connecting such facilities to the switchyard being built for MSP's Hualapai Valley Solar Project, which is located on private land north of Kingman, Arizona.
- c) Attached as Exhibit B hereto is a detailed scope of work related to the Feasibility Study.

2) Binding Agreement Regarding Responsibilities of the Parties

- a) Each Party shall pay the costs actually incurred by such Party in connection with conducting the Feasibility Study. If the Parties enter into a Project Agreement regarding the development of a Study Project, the funds actually expended by each Party in connection with the Feasibility Study (whether or not such funds were advanced or loaned to the other Party or were expended as payment of such Party's own expenses) shall be treated as capital cost contributions by such Party for purposes of any Project Agreement relating to such Study Project.
- b) As opportunities arise, the Parties shall cooperate to seek government financial support to conduct the Feasibility Study. Grant funding sought in the name of the Tribe will be managed and administered by the Tribe and/or its consultants. MSP shall cooperate with such grant funding efforts but shall not be required to pay or advance any costs in connection with the preparation, management or administration of any such proposals.
- c) During the Feasibility Period, the Tribe shall cooperate with MSP as it prepares periodic reports on the status of each Study Project and ongoing activities in connection with the Feasibility Study. Such reports shall be prepared for distribution to the Tribal Council, the Tribe's legal counsel and the management of MSP. The Parties shall cooperate and communicate in good faith regarding issues impacting the Feasibility Study.

3) Binding Agreement Regarding Feasibility Study Report

- a) Within one month after the conclusion of the Feasibility Study, MSP shall produce a Feasibility Study Report (the "Report"), which report shall describe feasibility issues and MSP's conclusions and recommendations regarding the Study Projects.
- b) Upon issuance of the Report, the Parties shall negotiate in good faith toward the execution of one or more Project Agreements for the purpose of joint development of each Study Project that the Parties determine to be feasible and mutually desirable for further development.

4) Non-Binding Agreement to Undertake Joint Development Activities

- a) The Parties will form a joint development company (the "JDC"), for the purposes of jointly developing Projects in respect of which the Parties have executed a Project Agreement (each, a "Development Project").
- b) Upon its formation, the Parties will grant the JDC the exclusive right to develop each Development Project for a period of not less than five (5) years.
- c) The Parties will cause the JDC to conduct such development activities as may be necessary to create an economically viable Development Project suitable to be financed by traditional sources of investment capital.

5) Non-Binding Agreement Regarding Activities of the JDC

- a) Upon formation of the JDC, the Tribe will transfer to the JDC all appropriate land rights needed to complete the development of the Project. The Tribe will cooperate with MSP and the JDC in connection with any and all governmental approvals (including, without limitation, approvals from the Bureau of Indian Affairs) in connection with such transfer of land rights.
- b) The JDC will conduct its activities with all due consideration of cultural sensitivities as identified in the Report and throughout any permitting efforts.
- c) Upon the formation of the JDC, each of MSP and the Tribe will transfer to the JDC all right and title to all of the studies, equipment, materials and reports used or produced during, or directly resulting from, the Feasibility Study.

6) Non-Binding Agreement Regarding Development Completion

- a) Upon successful completion of the development activities for any Development Project, or earlier if necessary in connection with the development thereof, the JDC will require the formation of a project company (each, a "Project Company") for the purposes of financing, constructing and operating the Development Project. Each Project Company will be owned by the Parties, but if the Parties agree, third parties may be included as equity investors. The agreements

associated with the formation of the Project Company will contain the following provisions:

- (i) A production-based royalty payable to the Tribe;
- (ii) A production-based royalty payable to fee landowners (other than the Tribe) on the portion of the Reservation utilized for such Development Project; and
- (iii) A development fee ("Developer Fee") payable to the JDC.

7) Binding Provisions Regarding the Term and Termination of the Agreement

- a) Sections 1, 2, 3, 7, 8, 9, 10 and 11 of this Agreement shall be binding upon both Parties as of the Effective Date. The remaining sections are non-binding expressions of the Parties' intentions and no agreement is intended thereby. This Agreement will terminate in respect of any Project upon the execution of a Project Agreement in respect of such Project.
- b) **Exclusivity Period.** For a period of nine (9) months after the issuance of the Report, MSP shall have the exclusive right to enter into a Project Agreement regarding the development of a Solar Project or an Interconnection Project with the Tribe or a Tribal affiliate (the "Exclusivity Period"). During the Exclusivity Period, the Tribe warrants that it will not negotiate with, execute any agreements with, or otherwise take steps to develop a project with another person or entity regarding any Solar Project or Interconnection Project addressed in the Report. If not terminated pursuant to Section 7(a) above, this Agreement will terminate at the conclusion of the Exclusivity Period.
- c) Upon termination, except as provided in this Section 7(c), all responsibilities of the Parties under this Agreement shall cease, and MSP shall provide the Tribe with a copy of all final reports and materials relating to the Feasibility Study that have been prepared by MSP through the date of such termination. Notwithstanding the foregoing, following termination of this Agreement, if the Tribe enters into any agreement or other arrangement, whether or not in writing, with another person or entity relating to the development of any Project, the Tribe shall immediately reimburse MSP for all of its costs incurred in connection with the Feasibility Study and the development of the Projects from the Effective Date through the date of the termination of this Agreement.

8) Binding Provisions Regarding the Use of Project Information and Reports

- a) The Report and other work product prepared in connection with the Feasibility Study or any work product related thereto (collectively, the "Work") shall be the sole and exclusive property of MSP immediately upon creation; provided, however, that during the term of this Agreement, the Tribe shall have the right to use the Work for purposes of advancing the purposes of the Parties and/or the JDC pursuant to this Agreement and/or any Project Agreement(s).

9) **Binding Provisions Regarding Governing Law and Dispute Resolution**

- a) This Agreement shall be governed by and construed in accordance with the laws of the Hualapai Tribe and the laws of the State of Arizona.
- b) In any dispute arising out of or relating to this Agreement, the Parties shall use commercially reasonable efforts to resolve the dispute amicably, through direct negotiation for a period of thirty (30) days from the date of notice of the dispute. If such direct negotiation is futile or unsuccessful, the Parties shall proceed to formal binding arbitration under the provisions immediately set forth below.
- c) If any dispute arising between the Parties with respect to this Agreement is not resolved by direct negotiation between the Parties, the Parties shall seek to resolve such dispute through binding arbitration administered by the American Arbitration Association ("AAA") (or such other private service as may be mutually agreed to by the Parties) in accordance with the Commercial Arbitration Rules of the AAA or such other rules as may be adopted or as such rules may be modified by agreement among the Parties, except as such rules may contemplate state court jurisdiction, and judgment on the award rendered by the arbitrators may be entered in the United States District Court for the District of Arizona, or if such court is deemed not to have jurisdiction, then any state court in the State of Arizona. The place of arbitration shall be within or within one hundred (100) miles of the jurisdictional boundaries of the Tribe, provided that if such geographical limitations would frustrate the ability of either Party to exercise its rights or remedies pursuant to this Agreement, the other Party shall be deemed to have waived such geographical limitation and the place of arbitration shall be mutually agreed upon by the Parties. Except as the Parties may agree otherwise, any such binding arbitration shall be conducted upon the request of any of the parties, before three (3) arbitrators. Within fifteen (15) days after commencement of the arbitration, MSP shall select one arbitrator and the Tribe shall select one arbitrator. The two selected arbitrators shall select a third neutral arbitrator within fifteen (15) days of the appointment of the last selected arbitrator. Any arbitrators designated to act under this Agreement shall make their award in strict conformity with said rules and this Agreement and shall have no power to depart from or change any of the provisions thereof, except as provided herein or as the parties may expressly agree otherwise in writing. The decision of the arbitrators shall be binding among the Parties.
- d) In the event either Party deems it necessary to retain an attorney to seek to enforce or to bring, an arbitration or a claim for equitable relief (as provided below) to enforce any of the terms, covenants or conditions hereof, or by reason of any breach hereunder the non-defaulting Party or Party prevailing in any such action or other proceeding shall be paid all its costs and reasonable attorneys' fees by the other Party, and in the event any judgment is secured by such prevailing Party, all such costs and attorneys' fees shall be included in any such judgment, with attorneys' fees to be set by arbitrators pursuant to Section 9(c).

- e) Notwithstanding the foregoing, either Party shall be permitted to seek equitable relief in the Hualapai Court at any time without resorting to negotiation or arbitration, in the event there is any action or proposed action by the other Party for which such Party determines the appropriate remedy to be an action for mandamus, an injunction or an order for specific performance.

10) Binding Miscellaneous Provisions

- a) This Agreement and the transactions contemplated hereby or consummated hereunder are not intended to form a legal partnership and shall not be governed by the laws or rules concerning partnerships, including, without limitation, for tax purposes.
- b) To the extent permitted by applicable law, all agreements entered into by MSP, the JDC and/or any Project Company shall provide that the JDC, the Project Company and any other contracting person or entity shall, in conducting work on the Reservation, give preference in employment and contracting to members of the Tribe, to the extent that qualified persons meeting such criteria are available for employment and competitive with market conditions and that any such contracts are on commercially reasonable terms.
- c) Neither Party may assign this Agreement whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Any attempted assignment shall be null and void.
- d) Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, mail, or facsimile, addressed to the recipient as specified below, or to such other address as may be designated by written notice of one Party to the other given in the manner specified above:

If to MSP:

Greg Bartlett
Mohave Sun Power LLC
85 Hamilton Street
Cambridge, Massachusetts 02139

With a copy to:

Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street
Suite 2200
Denver, Colorado 80202
Attention: David Bernhardt, Esq.

If to the Tribe:

Hualapai Tribe
Attn: Jack Ehrhardt
P.O. Box 179
Peach Springs, Arizona 86434

11) Binding Provisions Regarding the Tribe's Waiver of Sovereign Immunity

The Tribe shall adopt a limited waiver of sovereign immunity (a "Resolution of Limited Waiver"), evidencing all approvals required pursuant to the Tribe's governing documents and all applicable laws, which Resolution of Limited Waiver shall provide that:

- (i) the Tribe expressly acknowledges the intention of the Parties to commence, pursue and conduct arbitration proceedings, and to enforce the decisions of the arbitrators resulting therefrom in the United States District Court for the District of Arizona, or if such court is deemed not to have jurisdiction, then the courts of the State of Arizona;
- (ii) the Tribe expressly and irrevocably waives any defense, claim, or the application of any law, rule, regulation or interpretation that would affect the jurisdiction of any such state court over such dispute, or the enforcement of any judgment, decree or award of any such state court;
- (iii) the Tribe expressly and irrevocably waives any application of the exhaustion of tribal remedies or abstention doctrine and any other law, rule, regulation or interpretation that might otherwise require, as a matter of law or comity, that any such action or proceeding to compel or enforce arbitration be heard first in a tribal court; and
- (iv) if any part of the Resolution of Limited Waiver is held to be unenforceable, such part shall be severed and shall not affect either the duty of the Tribe to arbitrate or any other part of the Resolution of Limited Waiver.

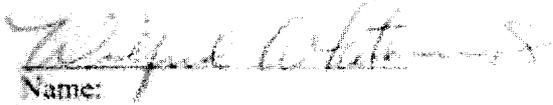
[Signatures appear on the following page.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Mohave Sun Power LLC


Name: Greg Bartlett
Title: Managing Director

Hualapai Tribe


Name:
Title:

ATTACHMENT 2

HUALAPAI VALLEY SOLAR PROJECT MEMORANDUM OF UNDERSTANDING

WHEREAS, Hualapai Valley Solar LLC is preparing to construct a concentrated solar power generating facility (Project) near the city of Kingman in Mohave County, Arizona;

WHEREAS, Hualapai Valley Solar LLC has pending an application with the Arizona Corporation Commission for authority to construct the Project in Mohave, Arizona;

WHEREAS, the Arizona Power Plant and Transmission Line Siting Committee has entered its Order requiring Hualapai Valley Solar LLC to make good faith efforts to enter into good faith discussion with the Arizona Building Trades Council (ABT) to reach agreement on terms of a Project Labor Agreement that will encourage utilization of qualified local or Arizona union or non-union subcontractors and construction workers for construction of the Project;

WHEREAS, Hualapai Valley Solar LLC and the ABT have engaged in such good faith negotiations and have identified various means and methods whereby such parties can assure that a high percentage of the construction workers will be local or Arizona residents and further offer valuable job training to local residents;

WHEREAS, Hualapai Valley Solar LLC desires to assure the presence of sufficient number of trained and skilled craftsmen to complete the Project in an efficient and safe manner;

WHEREAS, Hualapai Valley Solar LLC and various affiliated local unions of the Arizona Building Trades (ABT) desire to provide for job training programs for citizens of Mohave County and vicinity;

WHEREAS, Hualapai Valley Solar LLC and ABT desire to prevent friction caused by union and nonunion employees working side-by-side on the jobsite;

WHEREAS, Hualapai Valley Solar LLC and ABT desire to encourage the utilization of residents, regardless of union membership, of Mohave County and vicinity for construction of the Project;

WHEREAS, the Davis Bacon Act requires the paying of prevailing wage rates for Mohave County for construction work on the Project;

WHEREAS, Hualapai Valley Solar LLC and ABT acknowledge that regulatory authorities have expressed a strong interest in having subcontractors local to the Project participate in the Project's construction;

WHEREAS, Hualapai Valley Solar LLC and the ABT have devoted considerable time and resources to assuring that construction of the Project will proceed in a fashion that will maximize its positive economic impact upon the residents of Mohave County and other parts of Arizona.

WHEREAS, Hualapai Valley Solar LLC has not but expects to enter into a formal agreement with an Engineering Procurement and Construction Contractor (EPC) to manage and perform some or all of the construction work for the Project; and

WHEREAS Hualapai Valley Solar LLC anticipates that Cobra Instalaciones y Servicios, S.A. will become the EPC.

NOW, THEREFORE, Hualapai Valley Solar LLC and ABT agree as follows:

1. Hualapai Valley Solar LLC will utilize its best efforts to ensure that the EPC will enter into good faith negotiations with the ABT for a Project Labor Agreement that will apply to construction of the Project that meets the goals and objectives expressed in this Memorandum of Understanding.
2. Nothing herein shall require the ABT and the EPC to reach agreement on terms of a Project Labor Agreement that will apply to construction of the Project.
3. The terms of any Project Labor Agreement reached by and between ABT and the EPC are contingent upon the Project being built.
4. Hualapai Valley Solar LLC and ABT agree that the efficient, timely and safe completion of the Project will be served by a Project Labor Agreement that precludes strikes, guarantee an adequate supply of highly skilled craftsmen, provide for apprentice training, and establish uniform work rules.
5. Hualapai Valley Solar LLC and ABT acknowledge that subcontractors on the Project may be permitted to be signatory solely to the Project Labor Agreement.
6. Hualapai Valley Solar LLC and ABT agree that neither shall disclose this Memorandum of Understanding absent obtaining the prior written consent of the other; except to the Arizona Corporation Commission including the Arizona Power Plant and Transmission Line Siting Committee; or in response to a lawfully issued subpoena.
7. Hualapai Valley Solar LLC and ABT agree that the persons signing below may discuss the construction of this Project and the institution of training programs with (a) staff members; (b) representatives of potential construction contractors; (c) representatives of potential training programs; (d) legal counsel; (e) the selected EPC; and (f) with the mutual consent of the parties hereto.

8. Hualapai Valley Solar LLC will utilize its best efforts to ensure that the EPC selected for the Project shall not in any manner, or through any subterfuge or design, directly or indirectly, be a party to any agreement, plan or understanding whereby the EPC, or one of its subsidiaries, refrains from becoming the EPC for construction of the Project to evade the terms of this Memorandum of Understanding.
9. This Memorandum of Understanding shall not be modified unless done pursuant to a written agreement signed by Hualapai Valley Solar LLC and the ABT.
10. This Memorandum of Understanding expresses all agreements among the parties. There exist no other promises, conditions precedent or conditions subsequent.
11. If any article or provision of this Memorandum of Understanding shall be held invalid, inoperative or unenforceable by operation of law, or by any of the above mentioned regulatory entities or other tribunals of competent jurisdiction, the remainder of the Memorandum of Understanding or application of such article or provision to persons or circumstances other than to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.

HUALAPAI VALLEY SOLAR LLC

ARIZONA BUILDING TRADES

By: _____

By: _____

Its _____

Its: _____

Dated: _____, 2010

Dated: _____, 2010