

GROUNDWATER SAVINGS FACILITY AGREEMENT
BETWEEN
SALT RIVER VALLEY WATER USERS' ASSOCIATION
AND
CITY OF GOODYEAR, ARIZONA

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GROUNDWATER SAVINGS FACILITY AGREEMENT
BETWEEN
SALT RIVER VALLEY WATER USERS' ASSOCIATION
AND
CITY OF GOODYEAR, ARIZONA

1. PARTIES:

This Groundwater Savings Facility Agreement (“Agreement”) is made and entered into the ____ day of _____ 2019 by and between the SALT RIVER VALLEY WATER USERS’ ASSOCIATION, an Arizona Corporation, (hereinafter referred to as “Association”) and CITY OF GOODYEAR, ARIZONA), an Arizona Municipality, (hereinafter referred to as “Goodyear”). These parties may hereinafter be referred to individually as “Party” and collectively as “Parties”.

2. RECITALS:

This Agreement is made with regard to the following:

- 2.1 Shareholders of Association are owners of land (“Member Land”) within the Salt River Reservoir District (“SRRD”), having valid appropriative rights to water of the Salt and Verde Rivers. Association is responsible for delivery to Member Land of water developed, controlled or stored by it for the benefit of such land, including groundwater pumped from Association wells to supplement surface water.
- 2.2 Arizona Revised Statutes § 45-801.01, et seq. encourages the use of Central Arizona Project (“CAP”) water in place of groundwater by authorizing permits to be issued for water storage and the operation of groundwater savings facilities (“GSF”) in active management areas (“AMAs”).
- 2.3 The SRRD is within the Phoenix AMA. Association desires to reduce the amount of groundwater pumped from within the SRRD and delivered for use on Member Land by operating the SRRD as a GSF pursuant to a GSF permit.

- 2.4 Goodyear also desires to reduce groundwater pumping within the Phoenix AMA and is willing to arrange for the delivery of CAP water to the SRRD GSF. Association is willing to receive and then deliver such water in-lieu of groundwater for use on Member Land.
- 2.5 Association has obtained GSF Permit No. 72-553133.0005 from the Arizona Department of Water Resources ("ADWR"), allowing the delivery of up to 89,000 acre feet per year of water in lieu of groundwater for use on Member Lands.
- 2.6 Association and Goodyear desire to enter into this Agreement for delivery and use of CAP water within the GSF in-lieu of groundwater pumped therein.

3. AGREEMENT:

In consideration of the foregoing, the covenants and agreements contained herein and other good and valuable consideration, Association and Goodyear agree as follows:

4. AUTHORIZED REPRESENTATIVES:

Within thirty (30) days after execution of this Agreement, each Party shall designate in writing to the other Party, an Authorized Representative and an alternate to administer on behalf of the designating Party, the provisions of this Agreement as stipulated in Paragraphs 6.2, 6.3 and 6.5. Written notice of a change of an Authorized Representative or alternate shall be provided within thirty (30) days of such change. The alternate shall act only in the absence of the Authorized Representative. Neither the Authorized Representative nor the alternates shall have authority to amend this Agreement. Agreements of the Authorized Representative pursuant to this Agreement shall be in writing and signed by them.

5. PERMITS AND REPORTS:

- 5.1 At its expense, Association shall maintain in effect the GSF permit issued by the Arizona Department of Water Resources ("ADWR") to operate the SRRD as a GSF pursuant to and in accordance with the permit.
- 5.2 At its expense, Goodyear shall obtain and maintain in effect a water storage permit issued by the ADWR for the GSF specified in Paragraph 5.1.
- 5.3 The Party issued a permit by ADWR pursuant to this Paragraph 5 shall be responsible for the filing of reports required by the permit.

- 5.4 The Party holding a permit issued by ADWR described in this Paragraph 5 shall promptly notify the other Party if (a) the Party holding the permit receives notice that ADWR intends to amend said permit; (b) the Party elects to submit an application to amend the permit; or (c) the Party elects not to submit an application to renew the permit. In addition, SRP agrees to promptly notify Goodyear if (i) SRP alters the Storage Planning Diagram attached to the GSF plan of operation, or (ii) SRP receives notice from ADWR that ADWR has determined that a volume of water stored at the GSF is ineligible for storage or for long-term water storage credits.
- 5.5 Each Party shall cooperate with and provide non-proprietary information required by the other Party to obtain or conform to the requirements of a permit specified in this Paragraph 5. Association and Goodyear agree to comply with the operating requirements of the GSF permit and the GSF plan of operation applicable to them.
- 5.6 Goodyear acknowledges that ADWR may determine that certain water losses incurred transporting CAP water as in-lieu water ("In-Lieu Water") for use on Member Land, shall reduce the amount of water credits accrued by Goodyear from operation of the GSF.

6. CAP WATER CONTRACT:

- 6.1 Goodyear has entered into the contract described on Exhibit A ("Contract") for the delivery of CAP water by the Central Arizona Water Conservation District ("CAWCD"). CAP water ordered by Goodyear from CAWCD for delivery to the GSF during a calendar year pursuant to the contracts or lease described on Exhibit A shall be considered "In-Lieu Water" hereunder.
- 6.2 Goodyear shall order In-Lieu Water in accordance with CAWCD water ordering procedures, and the following procedures to be followed by the Authorized Representatives.
- 6.2.1 By September 15 of each year, for the following calendar year, the Authorized Representatives shall agree upon an estimate of the amount of Association groundwater pumping that can be displaced within the GSF on an acre-foot for acre-foot basis by the receipt of In-Lieu Water for use in the GSF. In reaching this agreement, the Authorized Representatives shall take into account the anticipated quantity of CAP water offered by any other party seeking to store

water in the GSF for the following calendar year and the amount of CAP Agricultural Pool water allocated to SRP by CAWCD for the following calendar year.

- 6.2.2 On a date specified by CAWCD in each year, the Goodyear Authorized Representative may order In-Lieu Water up to such estimated amount from CAWCD for delivery to the GSF during the following calendar year, with a copy of such order to the SRP Authorized Representative. For any year, the amount of In-Lieu Water ordered by Goodyear may be in any amount, so long as the order does not exceed the estimated amount of In-Lieu Water agreed upon by the Authorized Representatives under Subparagraph 6.2.1.
 - 6.2.3 Goodyear authorizes SRP to receive the In-Lieu Water ordered by Goodyear directly from CAWCD. The amounts, times and rates of delivery of the In-Lieu Water to the GSF during any month shall be determined by SRP and CAWCD.
 - 6.2.4 During the year for which the estimate was prepared, Association may, without any liability to Goodyear whatsoever, reduce the estimated amount of In-Lieu Water agreed upon by the Authorized Representatives under Subparagraph 6.2.1 due to a substantial increase in the quantity of surface water in storage, which event has resulted in a change in the project reservoir operating plan ("PROP") customarily used by Association to determine both groundwater pumping and use of surface water within the SRRD. By written notice, the Association Authorized Representative shall inform the Goodyear Authorized Representative of the required reduction of the estimate as soon as practicable. Goodyear shall then reduce its ordered amount of In-Lieu Water by a like amount.
- 6.3 In-Lieu Water shall be delivered through the CAP/SRP Interconnection Facility ("CSIF") to the Association canal system using Association's capacity, as necessary, in each of the components of the CSIF. The water shall be measured as provided in the CAP/SRP Interconnection Intergovernmental Agreement dated July 26, 1989, to which Association is a party.

- 6.4 Except as otherwise provided in this Agreement, Association shall have no obligation to conform to the requirements of the Contract, except Association shall pay to Goodyear twenty-five dollars (\$25.00) per acre foot toward the cost of In-Lieu Water Association orders and receives, unless otherwise agreed by the Authorized Representatives. Association's share of the cost shall be remitted to Goodyear by the end of the month following the month during which the In-Lieu Water was received.
- 6.5 Association shall be responsible for the In-Lieu Water and its delivery for use on Member Land in the GSF once the water has been introduced to the Association canal system. Goodyear shall neither be charged a transportation fee nor be assessed transportation losses for In-Lieu Water delivered to Association pursuant to this Agreement.
- 6.6 By the fifteenth (15th) day of each month, Association shall provide Goodyear a report that specifies the total amount of In-Lieu Water received by Association pursuant to this Agreement during: A) the prior calendar month; and B) the calendar year to date, inclusive of the prior calendar month.
- 6.7 Upon receipt of the report referenced in Paragraph 6.6, Goodyear shall submit an invoice to Association requesting payment for In-Lieu water received by Association during the prior calendar month. The invoice shall include a calculation of the number of acre feet of In-Lieu water received by Association during the prior calendar month times the per-acre-foot cost set forth in Paragraph 6.4 above. Association shall submit payment to Goodyear within thirty (30) days of receipt of invoice.
- 6.8 For each acre foot of In-Lieu Water received pursuant to this Agreement, Association shall reduce its groundwater pumping within the GSF by one (1) acre-foot in comparison to the amount of groundwater Association would have pumped within the GSF had it not received the In-Lieu Water.

7. TERM AND TERMINATION:

- 7.1 This Agreement shall become effective upon execution by all of the Parties.
- 7.2 Once effective, this Agreement shall remain in effect from year to year on a calendar year basis, unless terminated as hereinafter provided.
- 7.3 Either Party may terminate this Agreement effective at the end of the then current calendar year, upon written notice provided to the other Party at

least thirty (30) days prior to the end of the then current term of this Agreement.

7.4 Termination of this Agreement shall not relieve either Party of its obligation to make payments due pursuant to this Agreement.

8. RECOVERY OF WATER:

The Parties acknowledge that the recovery of water retained underground in the GSF, pursuant to this Agreement and applicable permits, is governed by the agreement Well Lease and Credit Recovery Agreement Among City of Goodyear, Salt River Valley Water Users' Association, and Salt River Project Agricultural Improvement and Power District.

9. WATER QUALITY:

Neither Party guarantees the quality of In-Lieu Water delivered, received or used pursuant to this Agreement. Each Party waives its right to make a claim against the other Party for the effect on the quality of surface or underground water as a result of this Agreement, unless such effect on water quality is the result of such other Party's negligent or wrongful action or inaction.

10. INDEMNIFICATION:

Each Party (Indemnitor) to this Agreement shall indemnify and hold harmless the other Party (Indemnitee) and its governing bodies, agents, directors, officers, and employees from any loss, damage, or liability, including reasonable attorney's fees, caused by a negligent or wrongful action or inaction on the part of the indemnitor and its governing bodies, agents, directors, officers, and employees, including without limitation, claims for bodily injury, illness, death, or damage to property. Each Party shall assume liability for its own negligent or wrongful action or inaction.

11. UNCONTROLLABLE FORCES

Neither Party shall be considered to be in default in the performance of any of its obligations hereunder (other than obligations of the Parties to make payments due hereunder) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces" shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities

and restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require either Party to settle any strike or labor dispute in which it is involved.

12. NOTICES:

Any notice, demand or request provided for in this Agreement shall be in writing and delivered in person, or sent by registered or certified mail, postage prepaid, to:

Salt River Valley Water Users' Association
c/o Corporate Secretary
PO Box 52025
Phoenix, AZ 85072-2025
Reference: SRP/Goodyear Groundwater Savings Facility Agreement
(With a copy to Association's Authorized Representative.)

Goodyear
City of Goodyear
Attn: City Clerk
190 N. Litchfield Road
Goodyear, Arizona 85338
(With a copy to City's Authorized Representative)

13. WAIVER:

The waiver by either Party of any breach of any term, covenant or condition herein shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein.

14. TRANSFER OF INTEREST:

No voluntary transfer of this Agreement or the rights or obligations of either Party under this Agreement shall be made without the written consent and approval of the other Party, except (a) to a successor in operation of the properties of either Party, or (b) to an Affiliate of either Party; however, water credits accrued from operation of the GSF may be assigned at the sole discretion of the accruing Party. For purposes of the foregoing, an "Affiliate" is any legal

entity directly or indirectly, controlling, controlled by or under common control with the transferring Party.

15. NO THIRD PARTY BENEFICIARIES:

This Agreement is solely for the benefit of the Parties, and does not create nor shall it be construed to create rights in any third party. No third party may enforce the terms and conditions of this Agreement.

16. GOVERNING LAW:

This Agreement is made under, and shall be governed by, the laws of the State of Arizona.

17. HEADINGS:

Title and paragraph headings herein are for reference only and are not part of this Agreement.

18. ENTIRE AGREEMENT:

The terms, covenants and conditions of this Agreement constitute the entire Agreement between the Parties, and no understandings or obligations not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the Parties.

IN WITNESS WHEREOF, this Agreement was executed by the Parties on the date first hereinabove written.

SALT RIVER VALLEY WATER USERS' ASSOCIATION

By: David C. Roberts
David C. Roberts, Associate General Manager
Water Resources

APPROVED AS TO FORM

Patrick B. Sigl
Patrick B. Sigl, Supervising Attorney,
Land and Water Rights

CITY OF GOODYEAR

By: _____
Julie Arendall, City Manager

Attest: _____
City Clerk

APPROVED AS TO FORM

City Attorney

**GROUNDWATER SAVINGS FACILITY AGREEMENT
BETWEEN
SALT RIVER VALLEY WATER USERS' ASSOCIATION
AND
CITY OF GOODYEAR, ARIZONA**

EXHIBIT A

- 1. Subcontract Among the United States, the Central Arizona Water Conservation District, and the City of Goodyear Providing for Water Service – Central Arizona Project dated May 25, 2007 (Subcontract No. 07-XX-30-W0498)**
- 2. Lease Agreement for CAP Water Among the City of Goodyear, the Gila River Indian Community, and the United States dated May 15, 2006.**

Subcontract No. 07-XX-30-W0498

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE CITY OF GOODYEAR
PROVIDING FOR WATER SERVICE

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this 25th day of May, 2007,

in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the CITY OF GOODYEAR, hereinafter referred to as the "Subcontractor," with its principal place of business in Goodyear, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

1
2 **WHEREAS**, the Colorado River Basin Project Act provides, among other
3 things, that for the purposes of furnishing irrigation and municipal and industrial water
4 supplies to water deficient areas of Arizona and western New Mexico through direct
5 diversion or exchange of water, control of floods, conservation and development of fish
6 and wildlife resources, enhancement of recreation opportunities, and for other purposes,
7 the Secretary of the Interior shall construct, operate, and maintain the Central Arizona
8 Project; and

9 **WHEREAS**, pursuant to the provisions of Arizona Revised Statutes §§ 48-
10 3701, *et seq.*, the Contractor has been organized with the power to enter into a contract
11 or contracts with the Secretary of the Interior to accomplish the purposes of Arizona
12 Revised Statutes, §§ 48-3701, *et seq.*; and

13 **WHEREAS**, pursuant to Section 304(b)(1) of the Colorado River Basin
14 Project Act, the Secretary of the Interior has determined that it is necessary to effect
15 repayment of the cost of constructing the Central Arizona Project pursuant to a master
16 contract and that the United States, together with the Contractor, shall be a party to
17 contracts that are in conformity with and subsidiary to the master contract; and

18 **WHEREAS**, the United States and the Contractor entered into Contract
19 No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, hereinafter referred to
20 as the "Repayment Contract," a copy of which is attached hereto as Exhibit "A" and by
21 this reference made a part hereof, whereby the Contractor agrees to repay to the United
22 States the reimbursable costs of the Central Arizona Project allocated to the Contractor;
23 and

24 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
25 subcontract with the United States and the Contractor for water service from water
26 supplies available under the Central Arizona Project; and

1 **WHEREAS**, upon completion of the Central Arizona Project, water shall be
2 available for delivery to the Subcontractor;

3 **NOW THEREFORE**, in consideration of the mutual and dependent
4 covenants herein contained, it is agreed as follows:

5 **3. DEFINITIONS:**

6 Definitions included in the Repayment Contract are applicable to this
7 subcontract; provided, however, that the terms "Agricultural Water" or "Irrigation Water"
8 shall mean water used for the purposes defined in the Repayment Contract on tracts of
9 land operated in units of more than 5 acres. The first letters of terms so defined are
10 capitalized herein. As heretofore indicated, a copy of the Repayment Contract is
11 attached as Exhibit "A." In addition, the following definitions shall apply to this
12 subcontract:

13 (a) "Available CAP Supply" shall mean for any given Year all Fourth
14 Priority Water available for delivery through the Central Arizona Project, water available
15 from CAP dams and reservoirs other than Modified Roosevelt Dam, and return flows
16 captured by the Secretary for CAP use.

17 (b) "Fourth Priority Water" shall mean Colorado River water available
18 for delivery within the State of Arizona for satisfaction of entitlements: (1) pursuant to
19 contracts, Secretarial reservations, perfected rights, and other arrangements between
20 the United States and water users in the State entered into or established subsequent to
21 September 30, 1968, for use on Federal, State, or privately owned lands in the State (for
22 a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2), after
23 first providing for the delivery of water under 43 U.S.C. §1524(e), pursuant to the
24 Repayment Contract for the delivery of Colorado River water for the CAP including use
25 of Colorado River water on Indian lands.
26

1 **4. DELIVERY OF WATER:**

2 4.1 Obligations of the United States. Subject to the terms, conditions,
3 and provisions set forth herein and in the Repayment Contract, during such periods as it
4 operates and maintains the Project Works, the United States shall deliver Project Water
5 for M&I use by the Subcontractor. The United States shall use all reasonable diligence
6 to make available to the Subcontractor the quantity of Project Water specified in the
7 schedule submitted by the Subcontractor in accordance with Article 4.4. After transfer of
8 OM&R to the Operating Agency, the United States shall make deliveries of Project Water
9 to the Operating Agency which shall make subsequent delivery to the Subcontractor as
10 provided herein.

11 4.2 Term of Subcontract. This subcontract shall become effective upon
12 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; (ii) the
13 date on which the Secretary of the Interior publishes in the Federal Register the
14 statement of findings described in section 207(c)(1) of the Arizona Water Settlements
15 Act, 118 Stat. 3478; and (iii) the date on which the Subcontractor has paid or provided
16 for payment of past M&I water service capital charges as required by the Contractor.
17 This subcontract shall be for permanent service as that term is used in Section 5 of the
18 Boulder Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered
19 under the terms of this subcontract for a period of 100 years beginning January 1 of the
20 Year following that in which the subcontract becomes effective; provided, that this
21 subcontract may be renewed upon written request by the Subcontractor upon terms and
22 conditions of renewal to be agreed upon not later than 1 year prior to the expiration of
23 this subcontract; and provided, further, that such terms and conditions shall be
24 consistent with Article 9.9 of the Repayment Contract.

25 * * * *

26 * * * *

1 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
2 under this subcontract is conditioned on the following, and the Subcontractor hereby
3 agrees that:

4 (a) All uses of Project Water and Return Flow shall be consistent
5 with Arizona water law unless such law is inconsistent with the Congressional directives
6 applicable to the Central Arizona Project.

7 (b) The system or systems through which water for Agricultural,
8 M&I (including underground storage), and Miscellaneous purposes is conveyed after
9 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or
10 other conduits provided and maintained with linings adequate in the Contracting Officer's
11 judgment to prevent excessive conveyance losses.

12 (c) The Subcontractor shall not pump, or within its legal
13 authority, permit others to pump ground water from within the exterior boundaries of the
14 Subcontractor's service area, which has been delineated on a map filed with the Con-
15 tractor and approved by the Contractor and the Contracting Officer, for use outside of
16 said service area unless such pumping is permitted under Title 45, Chapter 2, Arizona
17 Revised Statutes, as it may be amended from time to time, and the Contracting Officer,
18 the Contractor, and the Subcontractor shall agree, or shall have previously agreed, that
19 a surplus of ground water exists and drainage is or was required; provided, however,
20 that such pumping may be approved by the Contracting Officer and the Contractor, and
21 approval shall not be unreasonably withheld, if such pumping is in accord with the Basin
22 Project Act and upon submittal by the Subcontractor of a written certification from the
23 Arizona Department of Water Resources or its successor agency that the pumping and
24 transportation of ground water is in accord with Title 45, Chapter 2, Arizona Revised
25 Statutes, as it may be amended from time to time.

1 (d) The Subcontractor shall not sell, lease, exchange, forbear or
2 otherwise transfer Project Water; provided, however, that this does not prohibit
3 exchanges of Project Water within the State of Arizona covered by separate
4 agreements; and provided, further, that this does not prohibit effluent exchanges with
5 Indian tribes pursuant to Article 6.2; and provided, further, that this does not prohibit the
6 resale or exchange of Project Water within the State of Arizona pursuant to Subarticle
7 4.3(e).

8 (e)(i) Project Water scheduled for delivery in any Year under this
9 subcontract may be used by the Subcontractor or resold, or exchanged by the
10 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer
11 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
12 amount in excess of that which the Subcontractor is obligated to pay under this
13 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
14 Contractor for application against the Contractor's Repayment Obligation to the United
15 States; provided, however, that the Subcontractor shall be entitled to recover actual
16 costs of transportation, treatment, and distribution, including but not limited to capital
17 costs and OM&R costs.

18 (ii) Project Water scheduled for delivery in any Year under
19 this subcontract that cannot be used, resold, or exchanged by the Subcontractor may be
20 made available by the Contracting Officer and Contractor to other users. If such Project
21 Water is sold to or exchanged with other users, the Subcontractor shall be relieved of its
22 payments hereunder only to the extent of the amount paid to the Contractor by such
23 other users, but not to exceed the amount the Subcontractor is obligated to pay under
24 this subcontract for said water.

25 (iii) In the event the Subcontractor or the Contracting
26 Officer and the Contractor are unable to sell any portion of the Subcontractor's Project

1 Water scheduled for delivery and not required by the Subcontractor, the Subcontractor
2 shall be relieved of the pumping energy portion of the OM&R charges associated with
3 the undelivered water as determined by the Contractor.

4 (f) Notwithstanding any other provision of this subcontract,
5 Project Water shall not be delivered to the Subcontractor unless and until the
6 Subcontractor has obtained final environmental clearance from the United States for the
7 system or systems through which Project Water is to be conveyed after delivery to the
8 Subcontractor at the Subcontractor's Project turnout(s). Such system(s) shall include all
9 pipelines, canals, distribution systems, treatment, storage, and other facilities through or
10 in which Project Water is conveyed, stored, or treated after delivery to the Subcontractor
11 at the Subcontractor's Project turnout(s). In each instance, final environmental
12 clearance will be based upon a review by the United States of the Subcontractor's plans
13 for taking and using Project Water and will be given or withheld by the United States in
14 accordance with the Final Environmental Impact Statement -- Water Allocations and
15 Water Service Contracting (FES 82-7, filed March 19, 1982) and the National
16 Environmental Policy Act of 1969 (83 Stat. 852). Any additional action(s) required on
17 behalf of the Subcontractor in order to obtain final environmental clearance from the
18 United States will be identified to the Subcontractor by the United States, and no Project
19 Water shall be delivered to the Subcontractor unless and until the Subcontractor has
20 completed all such action(s) to the satisfaction of the United States.

21 4.4 Procedure for Ordering Water.

22 (a) At least 15 months prior to the date the Secretary expects to
23 issue the Notice of Completion of the Water Supply System, or as soon thereafter as is
24 practicable, the Contracting Officer shall announce by written notice to the Contractor the
25 amount of Project Water available for delivery during the Year in which said Notice of
26 Completion is issued (initial Year of water delivery) and during the following Year. Within

1 30 days of receiving such notice, the Contractor shall issue a notice of availability of
2 Project Water to the Subcontractor. The Subcontractor shall, within a reasonable period
3 of time as determined by the Contractor, submit a written schedule to the Contractor and
4 the Contracting Officer showing the quantity of water desired by the Subcontractor
5 during each month of said initial Year and the following Year. The Contractor shall notify
6 the Subcontractor by written notice of the Contractor's action on the requested schedule
7 within 2 months of the date of receipt of such request.

8 (b) The amounts, times, and rates of delivery of Project Water to
9 the Subcontractor during each Year subsequent to the Year following said initial Year of
10 water delivery shall be in accordance with a water delivery schedule for that Year. Such
11 schedule shall be determined in the following manner:

12 (i) On or before June 1 of each Year beginning with the
13 Year following the initial Year of water delivery pursuant to this subcontract, the
14 Contracting Officer shall announce the amount of Project Water available for delivery
15 during the following Year in a written notice to the Contractor. In arriving at this
16 determination, the Contracting Officer, subject to the provisions of the Repayment
17 Contract, shall use his best efforts to maximize the availability and delivery of Arizona's
18 full entitlement of Colorado River water over the term of this subcontract. Within 30 days
19 of receiving said notice, the Contractor shall issue a notice of availability of Project Water
20 to the Subcontractor.

21 (ii) On or before October 1 of each Year beginning with
22 the Year following said initial Year of water delivery, the Subcontractor shall submit in
23 writing to the Contractor and the Contracting Officer a water delivery schedule indicating
24 the amounts of Project Water desired by the Subcontractor during each month of the
25 following Year along with a preliminary estimate of Project Water desired for the
26 succeeding 2 years.

1 (iii) Upon receipt of the schedule, the Contractor and the
2 Contracting Officer shall review it and, after consultation with the Subcontractor, shall
3 make only such modifications to the schedule as are necessary to ensure that the
4 amounts, times, and rates of delivery to the Subcontractor are consistent with the
5 delivery capability of the Project, considering, among other things, the availability of
6 water and the delivery schedules of all subcontractors; provided, that this provision shall
7 not be construed to reduce annual deliveries to the Subcontractor.

8 (iv) On or before November 15 of each Year beginning
9 with the Year following said initial Year of water delivery, the Contractor shall determine
10 and furnish to the Subcontractor and the Contracting Officer the water delivery schedule
11 for the following Year which shall show the amount of water to be delivered to the
12 Subcontractor during each month of that Year, contingent upon the Subcontractor
13 remaining eligible to receive water under all terms contained herein.

14 (c) The monthly water delivery schedules may be amended upon
15 the Subcontractor's written request to the Contractor. Proposed amendments shall be
16 submitted by the Subcontractor to the Contractor no later than 15 days before the
17 desired change is to become effective, and shall be subject to review and modification in
18 like manner as the schedule. The Contractor shall notify the Subcontractor and the
19 Contracting Officer of its action on the Subcontractor's requested schedule modification
20 within 10 days of the Contractor's receipt of such request.

21 (d) The Contractor and the Subcontractor shall hold the United
22 States, its officers, agents, and employees, harmless on account of damage or claim of
23 damage of any nature whatsoever arising out of or connected with the actions of the
24 Contractor regarding water delivery schedules furnished to the Subcontractor.

25 (e) In no event shall the Contracting Officer or the Contractor be
26 required to deliver to the Subcontractor from the Water Supply System in any one month

1 a total amount of Project Water greater than eleven percent (11%) of the Subcontractor's
2 maximum entitlement; provided, however, that the Contracting Officer may deliver a
3 greater percentage in any month if such increased delivery is compatible with the overall
4 delivery of Project Water to other subcontractors as determined by the Contracting
5 Officer and the Contractor and if the Subcontractor agrees to accept such increased
6 deliveries.

7 4.5 Points of Delivery--Measurement and Responsibility for Distribution
8 of Water.

9 (a) The water to be furnished to the Subcontractor pursuant to
10 this subcontract shall be delivered at turnouts to be constructed by the United States at
11 such point(s) on the Water Supply System as may be agreed upon in writing by the
12 Contracting Officer and the Contractor, after consultation with the Subcontractor.

13 (b) Unless the United States and the Subcontractor agree by
14 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
15 expense, connection facilities required to take and convey the water from the turnouts to
16 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the
17 Contracting Officer, drawings showing the construction to be performed by the
18 Subcontractor within the Water Supply System right-of-way 6 months before starting said
19 construction. The facilities may be installed, operated, and maintained on the Water
20 Supply System right-of-way subject to such reasonable restrictions and regulations as to
21 type, location, method of installation, operation, and maintenance as may be prescribed
22 by the Contracting Officer.

23 (c) All water delivered from the Water Supply System shall be
24 measured with equipment furnished and installed by the United States and operated and
25 maintained by the United States or the Operating Agency. Upon the request of the
26 Subcontractor or the Contractor, the accuracy of such measurements shall be

1 investigated by the Contracting Officer or the Operating Agency, Contractor, and
2 Subcontractor, and any errors which may be mutually determined to have occurred
3 therein shall be adjusted; provided, that in the event the parties cannot agree on the
4 required adjustment, the Contracting Officer's determination shall be conclusive.

5 (d) Neither the United States, the Contractor, nor the Operating
6 Agency shall be responsible for the control, carriage, handling, use, disposal, or
7 distribution of Project Water beyond the delivery point(s) agreed to pursuant to Sub-
8 article 4.5(a). The Subcontractor shall hold the United States, the Contractor, and the
9 Operating Agency harmless on account of damage or claim of damage of any nature
10 whatsoever for which there is legal responsibility, including property damage, personal
11 injury, or death arising out of or connected with the Subcontractor's control, carriage,
12 handling, use, disposal, or distribution of such water beyond said delivery point(s).

13 4.6 Temporary Reductions. In addition to the right of the United States
14 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or
15 reduce the amount of water to be delivered, the United States or the Operating Agency
16 may, after consultation with the Contractor, temporarily discontinue or reduce the
17 quantity of water to be furnished to the Subcontractor as herein provided for the
18 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
19 Project facilities or any part thereof necessary for the furnishing of water to the
20 Subcontractor, but so far as feasible the United States or the Operating Agency shall
21 coordinate any such discontinuance or reduction with the Subcontractor and shall give
22 the Subcontractor due notice in advance of such temporary discontinuance or reduction,
23 except in case of emergency, in which case no notice need be given. Neither the United
24 States, its officers, agents, and employees, nor the Operating Agency, its officers,
25 agents, and employees, shall be liable for damages when, for any reason whatsoever,
26 any such temporary discontinuance or reduction in delivery of water occurs. If any such

1 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
2 water than what has been paid for in advance, the Subcontractor shall be entitled to be
3 reimbursed for the appropriate proportion of such advance payments prior to the date of
4 the Subcontractor's next payment of water service charges or the Subcontractor may be
5 given credit toward the next payment of water charges if the Subcontractor should so
6 desire.

7 4.7 Priority in Case of Shortage. On or before June 1 of each Year,
8 the Secretary shall announce the Available CAP Supply for the following Year in a
9 written notice to the Contractor.

10 (a) Prior to January 1, 2044, a time of shortage shall exist in any
11 Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the
12 entitlements set forth in subparagraphs (i) through (iii) below:

13 (i) Three hundred forty-three thousand seventy-nine
14 (343,079) acre-feet of CAP Indian Priority Water;

15 (ii) Six hundred thirty-eight thousand eight hundred
16 twenty-three (638,823) acre-feet of CAP M&I Priority
17 Water; and

18 (iii) Up to one hundred eighteen (118) acre-feet of CAP
19 M&I Priority Water converted from CAP NIA Priority
20 Water under the San Tan Irrigation District's CAP
21 Subcontract.
22

23 (b) On or after January 1, 2044, a time of shortage shall exist in
24 any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of
25 the entitlements as set forth in subparagraphs (i) through (iv) below:
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- (i) Three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water;
 - (ii) Six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water;
 - (iii) Up to forty-seven thousand three hundred three (47,303) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water pursuant to the Hohokam Agreement; and
 - (iv) Up to one hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.
- (c) Initial distribution of water in time of shortage.
- (i) If the Available CAP Supply is equal to or less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then 36.37518% of the Available CAP Supply shall be available for delivery as CAP Indian Priority Water and the remainder shall be available for delivery as CAP M&I Priority Water.
 - (ii) If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then the quantity of water available for

1 delivery as CAP Indian Priority Water shall be
2 determined in accordance with the following equation
3 and the remainder shall be available for delivery as
4 CAP M&I Priority Water:
5

$$6 \quad I = \{[32,770 \div (E - 853,079)] \times W\} + (343,079 - \{[32,770 \div (E - 853,079)] \times E\})$$

7 *where*

8
9 I = the quantity of water available for delivery as CAP Indian
10 Priority Water

11 E = the sum of the entitlements to CAP Indian Priority Water and
12 CAP M&I Priority Water as described in subparagraphs 4.7(a) or (b),
13 whichever is applicable; and
14

15
16 W = the Available CAP Supply
17

18 *Example A.* If, before January 1, 2044, the sum of the entitlements to CAP
19 Indian Priority Water and CAP M&I Priority Water as described in
20 subparagraph 4.7(a) is nine hundred eighty-one thousand nine hundred
21 two (343,079 + 638,823 + 0) acre-feet, then the quantity of water available
22 for delivery as CAP Indian Priority Water would be ninety-three thousand
23 three hundred three (93,303) acre-feet plus 25.43800% of the Available
24 CAP Supply.
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26

1 *Example B.* If, after January 1, 2044, the sum of the entitlements to CAP
2 Indian Priority Water and CAP M&I Priority Water as described in
3 subparagraph 4.7(b) is one million twenty-nine thousand three hundred
4 twenty-three (1,029,323) acre-feet (343,079 + 638,823 + 47,303 + 118),
5 then the quantity of water available for delivery as CAP Indian Priority
6 Water would be one hundred fifty-one thousand six hundred ninety-one
7 (151,691) acre-feet plus 18.59354% of the Available CAP Supply.
8

9 (d) In time of shortage unscheduled CAP Water shall be
10 redistributed as follows:

11 (i) Any water available for delivery as CAP Indian Priority
12 Water that is not scheduled for delivery pursuant to
13 contracts, leases or exchange agreements for the
14 delivery of CAP Indian Priority Water shall become
15 available for delivery as CAP M&I Priority Water.
16

17 (ii) CAP M&I Priority Water shall be distributed among
18 those entities with contracts for the delivery of CAP
19 M&I Priority Water in a manner determined by the
20 Secretary and the CAP Operating Agency in
21 consultation with M&I water users to fulfill all delivery
22 requests to the greatest extent possible. Any water
23 available for delivery as CAP M&I Priority Water that is
24 not scheduled for delivery pursuant to contracts,
25 leases or exchange agreements for the delivery of
26

1 CAP M&I Priority Water shall become available for
2 delivery as CAP Indian Priority Water.

3 (e) Any water remaining after all requests for delivery of CAP
4 Indian Priority Water and CAP M&I Priority Water have been satisfied shall become
5 available for delivery as CAP NIA Priority Water.
6

7 (f) Nothing in this paragraph 4.7 shall be construed to allow or
8 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
9 contracts, CAP water in amounts greater than such contractor's entitlement.

10 4.8 Secretarial Control of Return Flow.

11 (a) The Secretary reserves the right to capture all Return Flow
12 flowing from the exterior boundaries of the Contractor's Service Area as a source of
13 supply and for distribution to and use of the Central Arizona Project to the fullest extent
14 practicable. The Secretary also reserves the right to capture for Project use Return Flow
15 which originates or results from water contracted for from the Central Arizona Project
16 within the boundaries of the Contractor's Service Area if, in his judgment, such Return
17 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
18 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
19 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
20 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
21 shall, at least 60 days in advance of any proposed sale of such water, furnish the
22 following information in writing to the Contracting Officer and the Contractor:
23

24 * * * *

25 * * * *

- (i) The name and address of the prospective buyer.
- (ii) The location and proposed use of the Return Flow.
- (iii) The price to be charged for the Return Flow.

(b) The price charged for the Return Flow may cover the cost incurred by the Subcontractor for Project Water plus the cost required to make the Return Flow usable. If the price received for the Return Flow is greater than the costs incurred by the Subcontractor, as described above, the excess amount shall be forthwith returned by the Subcontractor to the Contractor for application against the Contractor's Repayment Obligation to the United States. Costs required to make Return Flow usable shall include but not be limited to capital costs and OM&R costs including transportation, treatment, and distribution, and the portion thereof that may be retained by the Subcontractor shall be subject to the advance approval of the Contractor and the Contracting Officer.

(c) Any Return Flow captured by the United States and determined by the Contracting Officer and the Contractor to be suitable and available for use by the Subcontractor may be delivered by the United States or Operating Agency to the Subcontractor as a part of the water supply for which the Subcontractor subcontracts hereunder and such water shall be accounted and paid for pursuant to the provisions hereof.

(d) All capture, recapture, use, reuse, and sale of Return Flow under this article shall be in accord with Arizona water law unless such law is inconsistent with the Congressional directives applicable to the Central Arizona Project.

1 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
2 this subcontract, shall comply with all applicable water and air pollution laws and
3 regulations of the United States and the State of Arizona and shall obtain all required
4 permits or licenses from the appropriate Federal, State, or local authorities.

5 4.10 Quality of Water. The operation and maintenance of Project
6 facilities shall be performed in such manner as is practicable to maintain the quality of
7 water made available through such facilities at the highest level reasonably attainable as
8 determined by the Contracting Officer. Neither the United States, the Contractor, nor the
9 Operating Agency warrants the quality of water and is under no obligation to construct or
10 furnish water treatment facilities to maintain or better the quality of water. The
11 Subcontractor waives its right to make a claim against the United States, the Operating
12 Agency, the Contractor, or another subcontractor because of changes in water quality
13 caused by the commingling of Project Water with other water.
14

15 4.11 Exchange Water.

16 (a) Where the Contracting Officer determines the Subcontractor
17 is physically able to receive Colorado River mainstream water in exchange for or in
18 replacement of existing supplies of water from surface sources other than the Colorado
19 River, the Contracting Officer may require that the Subcontractor accept said
20 mainstream water in exchange for or in replacement of said existing supplies pursuant to
21 the provisions of Section 304(d) of the Basin Project Act; provided, however, that a sub-
22 contractor on the Project aqueduct shall not be required to enter into exchanges in which
23 existing supplies of water from surface sources are diverted for use by other
24 subcontractors downstream on the Project aqueduct.
25
26

1 (b) If, in the event of shortages, the Subcontractor has yielded
2 water from other surface water sources in exchange for Colorado River mainstream
3 water supplied by the Contractor or the Operating Agency, the Subcontractor shall have
4 first priority against other users supplied with Project Water that have not yielded water
5 from other surface water sources but only in quantities adequate to replace the water so
6 yielded.
7

8 4.12 Entitlement to Project M&I Water.

9 (a) The Subcontractor is entitled to take a maximum of
10 10,742 acre-feet of Project Water for M&I uses including but not limited to underground
11 storage.
12

13 (b) If at any time during the term of this subcontract there is
14 available for allocation additional M&I Project Water, or Agricultural Water converted to
15 M&I use, it shall be delivered to the Subcontractor at the same water service charge per
16 acre-foot and with the same priority as other M&I Water, upon execution or amendment
17 of an appropriate subcontract among the United States, the Contractor, and the
18 Subcontractor and payment of an amount equal to the acre-foot charges previously paid
19 by other subcontractors pursuant to Article 5.2 hereof plus interest. In the case of
20 Agricultural Water conversions, the payment shall be reduced by all previous payments
21 of agricultural capital charges for each acre-foot of water converted. The interest due
22 shall be calculated for the period between issuance of the Notice of Completion of the
23 Water Supply System and execution or amendment of the subcontract using the
24 weighted interest rate received by the Contractor on all investments during that period.
25
26

1 4.13 Delivery of Project Water Prior to Completion of Project Works.

2 Prior to the date of issuance of the Notice of Completion of the Water Supply System by
3 the Secretary, water may be made available for delivery by the Secretary on a "when
4 available" basis at a water rate and other terms to be determined by the Secretary after
5 consultation with the Contractor.
6

7 5. PAYMENTS:

8 5.1 Water Service Charges for Payment of Operation, Maintenance, and
9 Replacement Costs. Subject to the provisions of Article 5.4 hereof, the Subcontractor
10 shall pay in advance for Project OM&R costs estimated to be incurred by the United
11 States or the Operating Agency. At least 15 months prior to first delivery of Project
12 Water, or as soon thereafter as is practicable, the Contractor shall furnish the
13 Subcontractor with an estimate of the Subcontractor's share of OM&R costs to the end
14 of the initial Year of water delivery and an estimate of such costs for the following Year.
15 Within a reasonable time of the receipt of said estimates, as determined by the
16 Contractor, but prior to the delivery of water, the Subcontractor shall advance to the Con-
17 tractor its share of such estimated costs to the end of the initial month of water delivery
18 and without further notice or demand shall on or before the first day of each succeeding
19 month of the initial Year of water delivery and the following Year advance to the
20 Contractor in equal monthly installments the Subcontractor's share of such estimated
21 costs. Advances of monthly payments for each subsequent Year shall be made by the
22 Subcontractor to the Contractor on the basis of annual estimates to be furnished by the
23 Contractor on or before June 1 preceding each said subsequent Year and the advances
24 of payments for said estimated costs shall be due and payable in equal monthly
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1 payments on or before the first day of each month of the subsequent Year. Differences
2 between actual OM&R costs and estimated OM&R costs shall be determined by the
3 Contractor and shall be adjusted in the next succeeding annual estimates; provided,
4 however, that if in the opinion of the Contractor the amount of any annual OM&R
5 estimate is likely to be insufficient to cover the above-mentioned costs during such
6 period, the Contractor may increase the annual estimate of the Subcontractor's OM&R
7 costs by written notice thereof to the Subcontractor, and the Subcontractor shall forthwith
8 increase its remaining monthly payments in such Year to the Contractor by the amount
9 necessary to cover the insufficiency. All estimates of OM&R costs shall be accompanied
10 by data and computations relied on by the Contractor in determining the amounts of the
11 estimated OM&R costs and shall be subject to joint review by the Subcontractor and the
12 Contractor.
13 Contractor.

14 5.2 M&I Water Service Charges.

15 (a) Subject to the provisions of Article 5.4 hereof and in addition
16 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
17 of the delivery of Project M&I Water by the United States or the Operating Agency, make
18 payment to the Contractor in equal semiannual installments of an M&I Water service
19 capital charge based on a maximum entitlement of 10,742 acre-feet per year multiplied
20 by the rate established by the Contractor for that year.
21

22 (b) The M&I Water service capital charge may be adjusted
23 periodically by the Contractor as a result of repayment determinations provided for in the
24 Repayment Contract and to reflect all sources of revenue, but said charge per acre-foot
25 shall not be greater than the amount required to amortize Project capital costs allocated
26

1 to the M&I function and determined by the Contracting Officer to be a part of the
2 Contractor's Repayment Obligation. Such amortization shall include interest at 3.342
3 percent per annum. If any adjustment is made in the M&I Water service capital charge,
4 notice thereof shall be given by the Contractor to the United States and to the
5 Subcontractor on or before June 1 of the Year preceding the Year the adjusted charge
6 becomes effective. The M&I Water service capital charge payment for the initial Year
7 shall be advanced to the Contractor in equal semiannual installments on or before
8 December 1 preceding the initial Year and June 1 of said initial Year; provided, however,
9 that the payment of the initial M&I Water service capital charge shall not be due until the
10 Year in which Project Water is available to the Subcontractor after Notice of Completion
11 of the Water Supply System is issued. Thereafter, for each subsequent Year, payments
12 by the Subcontractor in accordance with the foregoing provisions shall be made in equal
13 semiannual installments on or before the December 1 preceding said subsequent Year
14 and the June 1 of said subsequent Year as may be specified by the Contractor in written
15 notices to the Subcontractor.
16

17
18 (c) Payment of all M&I Water service capital and corresponding
19 OM&R charges becoming due hereunder prior to or on the dates stipulated in Articles
20 5.1 and 5.2 is a condition precedent to receiving M&I Water under this subcontract.
21

22 (d) All payments to be made to the Contractor or the United
23 States under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such
24 payments fall due from revenues legally available to the Subcontractor for such payment
25 from the sale of water to its water users and from any and all other sources which might
26 be legally available; Provided, That no portion of the general taxing authority of the

1 Subcontractor, nor its general funds, nor funds from ad valorem taxes are obligated by
2 the provisions of this subcontract, nor shall such sources be liable for the payments,
3 contributions, and other costs pursuant to this subcontract, or to satisfy any obligation
4 hereunder unless duly and lawfully allocated and budgeted for such purpose by the
5 Subcontractor for the applicable budget year; and Provided, further, That no portion of
6 this agreement shall ever be construed to create an obligation superior in lien to or on a
7 parity with the Subcontractor's revenue bonds now or hereafter issued. The
8 Subcontractor shall levy and impose such necessary water service charges and rates
9 and use all the authority and resources available to it to collect all such necessary water
10 service charges and rates in order that the Subcontractor may meet its obligations
11 hereunder and make in full all payments required under this subcontract on or before the
12 date such payments become due.
13

14
15 5.3 Loss of Entitlement. The Subcontractor shall have no right to
16 delivery of water from Project facilities during any period in which the Subcontractor may
17 be in arrears in the payment of any charges due the Contractor. The Contractor may sell
18 to another entity any water determined to be available under the Subcontractor's
19 entitlement for which payment is in arrears; provided, however, that the Subcontractor
20 may regain the right to use any unsold portion of the water determined to be available
21 under the original entitlement upon payment of all delinquent charges plus any
22 difference between the subcontractual obligation and the price received in the sale of the
23 water by the Contractor and payment of charges for the current period.
24

25 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
26 refuses in any Year to accept delivery of the quantity of water available for delivery to

1 and required to be accepted by it pursuant to this subcontract, or in the event the
2 Subcontractor in any Year fails to submit a schedule for delivery as provided in Article
3 4.4 hereof, said failure or refusal shall not relieve the Subcontractor of its obligation to
4 make the payments required in this subcontract.

5 5.5 Charge for Late Payments. The Subcontractor shall pay a late
6 payment charge on installments or charges that are received after the due date. The
7 late payment charge percentage rate calculated by the Department of the Treasury and
8 published quarterly in the Federal Register shall be used; provided, that the late
9 payment charge percentage rate shall not be less than 0.5 percent per month. The late
10 payment charge percentage rate applied on an overdue payment shall remain in effect
11 until payment is received. The late payment rate for a 30-day period shall be determined
12 on the day immediately following the due date and shall be applied to the overdue
13 payment for any portion of the 30-day period of delinquency. In the case of partial late
14 payments, the amount received shall first be applied to the late charge on the overdue
15 payment and then to the overdue payment.

16
17
18 6. GENERAL PROVISIONS:

19 6.1 Repayment Contract Controlling. Pursuant to the Repayment
20 Contract, the United States has agreed to construct and, in the absence of an approved
21 Operating Agency, to operate and maintain the works of the Central Arizona Project and
22 to deliver Project Water to the various subcontractors within the Project Service Area;
23 and the Contractor has obligated itself for the payment of various costs, expenses, and
24 other amounts allocated to the Contractor pursuant to Article 9 of the Repayment
25 Contract. The Subcontractor expressly approves and agrees to all the terms presently
26 set out in the Repayment Contract including Subarticle 8.8(b)(viii) thereof, or as such

1 terms may be hereafter amended, and agrees to be bound by the actions to be taken
2 and the determinations to be made under that Repayment Contract, except as otherwise
3 provided herein.

4 6.2 Effluent Exchanges. The Subcontractor may enter into direct
5 effluent exchanges with Indian entities that have received an allocation of Project Water
6 and receive all benefits from the exchange.

7 6.3 Notices. Any notice, demand or request authorized or required by
8 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
9 delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O.
10 Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
11 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
12 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the
13 City of Goodyear, P.O. Box 5100, 5424 S. 157th Avenue, Goodyear, Arizona, 85338, on
14 behalf of the United States or Contractor. The designation of the addressee or the
15 address may be changed by notice given in the same manner as provided in this Article
16 for other notices.
17
18

19 6.4 Water Conservation Program.

20 (a) While the contents and standards of a given water
21 conservation program are primarily matters of State and local determination, there is a
22 strong Federal interest in developing an effective water conservation program because
23 of this subcontract. The Subcontractor shall develop and implement an effective water
24 conservation program for all uses of water that is provided from or conveyed through
25 Federally constructed or Federally financed facilities. That water conservation program
26

1 shall contain definite goals, appropriate water conservation measures, and time
2 schedules for meeting the water conservation objectives.

3 (b) A water conservation program, acceptable to the Contractor
4 and the Contracting Officer, shall be in existence prior to one or all of the following: (1)
5 service of Federally stored/conveyed water; (2) transfer of operation and maintenance of
6 the Project facilities to the Contractor or Operating Agency; or (3) transfer of the Project
7 to an operation and maintenance status. The distribution and use of Federally
8 stored/conveyed water and/or the operation of Project facilities transferred to the
9 Contractor shall be consistent with the adopted water conservation program. Following
10 execution of this subcontract, and at subsequent 5-year intervals, the Subcontractor
11 shall resubmit the water conservation plan to the Contractor and the Contracting Officer
12 for review and approval. After review of the results of the previous 5 years and after
13 consultation with the Contractor, the Subcontractor, and the Arizona Department of
14 Water Resources or its successor, the Contracting Officer may require modifications in
15 the water conservation program to better achieve program goals.
16
17

18 6.5 Rules, Regulations, and Determinations.

19 (a) The Contracting Officer shall have the right to make, after an
20 opportunity has been offered to the Contractor and Subcontractor for consultation, rules
21 and regulations consistent with the provisions of this subcontract, the laws of the United
22 States and the State of Arizona, to add to or to modify them as may be deemed proper
23 and necessary to carry out this subcontract, and to supply necessary details of its
24 administration which are not covered by express provisions of this subcontract. The
25 Contractor and Subcontractor shall observe such rules and regulations.
26

1 (b) Where the terms of this subcontract provide for action to be
2 based upon the opinion or determination of any party to this subcontract, whether or not
3 stated to be conclusive, said terms shall not be construed as permitting such action to be
4 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In
5 the event that the Contractor or Subcontractor questions any factual determination made
6 by the Contracting Officer, the findings as to the facts shall be made by the Secretary
7 only after consultation with the Contractor or Subcontractor and shall be conclusive upon
8 the parties.
9

10 6.6 Officials Not to Benefit.

11 (a) No Member of or Delegate to Congress or Resident
12 Commissioner shall be admitted to any share or part of this subcontract or to any benefit
13 that may arise herefrom. This restriction shall not be construed to extend to this
14 subcontract if made with a corporation or company for its general benefit.
15

16 (b) No official of the Subcontractor shall receive any benefit that
17 may arise by reason of this subcontract other than as a water user within the Project and
18 in the same manner as other water users within the Project.

19 6.7 Assignment Limited--Successors and Assigns Obligated. The
20 provisions of this subcontract shall apply to and bind the successors and assigns of the
21 parties hereto, but no assignment or transfer of this subcontract or any part or interest
22 therein shall be valid until approved by the Contracting Officer.
23

24 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be
25 construed (a) as depriving any party from pursuing and prosecuting any remedy in any
26 appropriate court of the United States or the State of Arizona which would otherwise be

1 available to such parties even though provisions herein may declare that determinations
2 or decisions of the Secretary or other persons are conclusive or (b) as depriving any
3 party of any defense thereto which would otherwise be available.

4 6.9 Books, Records, and Reports. The Subcontractor shall establish
5 and maintain accounts and other books and records pertaining to its financial
6 transactions, land use and crop census, water supply, water use, changes of Project
7 works, and to other matters as the Contracting Officer may require. Reports thereon
8 shall be furnished to the Contracting Officer in such form and on such date or dates as
9 he may require. Subject to applicable Federal laws and regulations, each party shall
10 have the right during office hours to examine and make copies of each other's books and
11 records relating to matters covered by this subcontract.
12

13 6.10 Equal Opportunity. During the performance of this subcontract, the
14 Subcontractor agrees as follows:
15

16 (a) The Subcontractor shall not discriminate against any
17 employee or applicant for employment because of race, color, religion, sex, or national
18 origin. The Subcontractor shall take affirmative action to ensure that applicants are
19 employed, and that employees are treated during employment without regard to their
20 race, color, religion, sex, or national origin. Such action shall include, but not be limited
21 to the following: Employment, upgrading, demotion, or transfer; recruitment or
22 recruitment advertising; layoff or termination; rates of pay or other forms of
23 compensation; and selection for training, including apprenticeship. The Subcontractor
24 agrees to post in conspicuous places, available to employees and applicants for
25
26

1 employment, notices to be provided setting forth the provisions of this nondiscrimination
2 clause.

3 (b) The Subcontractor shall, in all solicitations or advertisements
4 for employees placed by or on behalf of the Subcontractor, state that all qualified
5 applicants shall receive consideration for employment without discrimination because of
6 race, color, religion, sex, or national origin.
7

8 (c) The Subcontractor shall send to each labor union or
9 representative of workers with which it has a collective bargaining agreement or other
10 contract or understanding, a notice, to be provided by the Contracting Officer, advising
11 said labor union or workers' representative of the Subcontractor's commitments under
12 Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of
13 the notice in conspicuous places available to employees and applicants for employment.
14

15 (d) The Subcontractor shall comply with all provisions of
16 Executive Order No. 11246 of September 24, 1965, as amended, and of the rules,
17 regulations, and relevant orders of the Secretary of Labor.

18 (e) The Subcontractor shall furnish all information and reports
19 required by said amended Executive Order and by the rules, regulations, and orders of
20 the Secretary of Labor, or pursuant thereto, and shall permit access to its books,
21 records, and accounts by the Contracting Officer and the Secretary of Labor for
22 purposes of investigation to ascertain compliance with such rules, regulations, and
23 orders.
24

25 (f) In the event of the Subcontractor's noncompliance with the
26 nondiscrimination clauses of this subcontract or with any of such rules, regulations, or

1 orders, this subcontract may be canceled, terminated, or suspended, in whole or in part,
2 and the Subcontractor may be declared ineligible for further Government contracts in
3 accordance with procedures authorized in said amended Executive Order and such
4 other sanctions may be imposed and remedies invoked as provided in said amended
5 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as
6 otherwise provided by law.
7

8 (g) The Subcontractor shall include the provisions of paragraphs
9 (a) through (g) in every subcontract or purchase order unless exempted by the rules,
10 regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said
11 amended Executive Order, so that such provisions shall be binding upon each
12 subcontractor or vendor. The Subcontractor shall take such action with respect to any
13 subcontract or purchase order as may be directed by the Secretary of Labor as a means
14 of enforcing such provisions, including sanctions for noncompliance; provided, however,
15 that in the event a Subcontractor becomes involved in, or is threatened with, litigation
16 with a subcontractor or vendor as a result of such direction, the Subcontractor may
17 request the United States to enter into such litigation to protect the interest of the United
18 States.
19

20 6.11 Title VI, Civil Rights Act of 1964.
21

22 (a) The Subcontractor agrees that it shall comply with Title VI of
23 the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or
24 pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to
25 that title to the end that, in accordance with Title VI of that Act and the Regulation, no
26 person in the United States shall, on the grounds of race, color, or national origin be

1 excluded from participation in, be denied the benefits of, or be otherwise subjected to
2 discrimination under any program or activity for which the Subcontractor receives
3 financial assistance from the United States and hereby gives assurance that it shall
4 immediately take any measures to effectuate this agreement.

5 (b) If any real property or structure thereon is provided or
6 improved with the aid of Federal financial assistance extended to the Subcontractor by
7 the United States, this assurance obligates the Subcontractor, or in the case of any
8 transfer of such property, any transferee for the period during which the real property or
9 structure is used for a purpose involving the provision of similar services or benefits. If
10 any personal property is so provided, this assurance obligates the Subcontractor for the
11 period during which it retains ownership or possession of the property. In all other
12 cases, this assurance obligates the Subcontractor for the period during which the
13 Federal financial assistance is extended to it by the United States.

14 (c) This assurance is given in consideration of and for the
15 purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or
16 other Federal financial assistance extended after the date hereof to the Subcontractor by
17 the United States, including installment payments after such date on account of
18 arrangements for Federal financial assistance which were approved before such date.
19 The Subcontractor recognizes and agrees that such Federal financial assistance shall
20 be extended in reliance on the representations and agreements made in this assurance,
21 and that the United States shall reserve the right to seek judicial enforcement of this
22 assurance. This assurance is binding on the Subcontractor, its successors, transferees,
23 and assignees.
24
25
26

1 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
2 a final decree of the proper court of the State of Arizona approving and confirming the
3 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
4 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
5 such decree and of all pertinent supporting records. This subcontract shall not be
6 binding on the United States, the Contractor, or the Subcontractor until such final decree
7 has been entered.
8

9 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
10 or advance of any money or the performance of any work by the United States
11 hereunder which may require appropriation of money by the Congress or the allotment of
12 funds shall be contingent upon such appropriation or allotment being made. The failure
13 of the Congress to appropriate funds or the absence of any allotment of funds shall not
14 relieve the Subcontractor from any obligation under this subcontract. No liability shall
15 accrue to the United States in case such funds are not appropriated or allotted.
16

17 IN WITNESS WHEREOF, the parties hereto have executed this
18 subcontract No. 07-XX-30-W0498 the day and year first above-written.
19

20 Legal Review and Approval

THE UNITED STATES OF AMERICA

21
22 By: Katherine Ott Verburg
23 Field Solicitor
24 Phoenix, Arizona

By: Larry Walkowiak
Acting Regional Director
Lower Colorado Region
Bureau of Reclamation

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CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: [Signature]
Secretary

By: [Signature]
President

CITY OF GOODYEAR

Attest: Ryan Muehall
Title: Acting City Clerk

By: Stephen Cleveland
Title: City Manager



Approved as to form:

[Signature]
City Attorney

EXHIBIT 17.1A

**LEASE AGREEMENT FOR CAP WATER AMONG THE CITY OF GOODYEAR
THE GILA RIVER INDIAN COMMUNITY AND THE
UNITED STATES**

1. PREAMBLE

This agreement providing for the lease of Central Arizona Project water ("Lease Agreement"), made this 15th day of May, ^{2006 bb AN/} 2005, is among the United States of America (hereinafter "United States"), the Gila River Indian Community (hereinafter "Community") and the City of Goodyear, Arizona (hereinafter "City").

2. RECITALS

2.1 The Parties to this Lease Agreement are also parties to the Settlement Agreement as defined under Subparagraph 3.22 herein.

2.2 As partial consideration for entering into the Settlement Agreement, the Community and the City are entering into this Lease Agreement by which the Community will lease to the City a portion of the Community's CAP Indian Priority Water to which the Community is entitled in accordance with the Community Water Delivery Contract. The parties acknowledge that the consideration received by the Community in exchange for the Leased Water represents fair market value.

2.3 By the Arizona Water Settlements Act, Public Law 108-451 (118 Stat. 3478) (the "Act"), the United States confirmed the Settlement Agreement and specifically provided for an amendment to the Community Water Delivery Contract authorizing the Community to lease Community CAP Water.

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CON-CY-1148-08

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2.3.1 The Community Water Delivery Contract, which authorizes the Community to enter into this Lease Agreement, is attached to the Settlement Agreement as exhibit 8.2.

3.0 DEFINITIONS

3.1 "CAP" or "Central Arizona Project" shall mean the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. §§ 1521 et seq.).

3.2 "CAP Contractor" shall mean a person or entity that has entered into a long-term contract (as that term is used in the CAP Repayment Stipulation, which is defined in the Settlement Agreement in subparagraph 2.35) with the United States for delivery of water through the CAP System.

3.3 "CAP Repayment Contract" shall mean the contract dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project. The term "CAP Repayment Contract" includes all amendments to and revisions of that contract. This is the same contract referred to in the Act as Contract No. 14-0906-09W-09245, Amendment No. 1.

3.4 "CAP Subcontractor" shall mean a person or entity that has entered into a long-term subcontract (as that term is used in the CAP Repayment Stipulation, which is defined in the Settlement Agreement in subparagraph 2.35) with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.5 "CAWCD" or "Central Arizona Water Conservation District" shall mean the

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political subdivision of the State that is the contractor under the CAP Repayment Contract.

3.6 "CAP Service Area" or "District" shall mean the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties, or portions thereof, that may hereafter become part of the District.

3.7 "Cities" shall mean the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix and Scottsdale.

3.8 "City" shall mean the City of Goodyear, an Arizona Municipal Corporation, its predecessors, successors and assigns.

3.9 "Community CAP Water" or "Community's CAP Water" shall mean water to which the Community is entitled pursuant to the Community Water Delivery Contract.

3.10 "Community Water Delivery Contract" shall mean Contract No. 3-07-30-W0284 between the Community and the United States dated October 22, 1992. The term "Community Water Delivery Contract" includes any amendments to the contract described in the preceding sentence. A copy of the Community Water Delivery Contract is attached as exhibit 8.2 of the Settlement Agreement. This is the same contract referred to in the Act as Contract No. 3-0907-0930-09W0284.

3.11 "CPI-U" shall mean the All Items Consumer Price Index All Urban Consumers, U.S. City Average (1982-84 = 100), which is published by the U.S. Department of Labor, Bureau of Labor Statistics.

3.12 "Enforceability Date" shall be the date on which the Secretary publishes in the Federal Register the statement of findings described in Section 207(c) of the Act.

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3.13 “Gila River Adjudication Proceedings” shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated)*. This is the same case referred to in the Act as *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-091 (Salt), W-092 (Verde), W-093 (Upper Gila), W-094 (San Pedro) (Consolidated)*.

3.14 “Gila River Indian Community” or “the Community” shall mean the government composed of members of the Pima Tribe and the Maricopa Tribe, which is organized under Section 16 of the Act of June 18, 1934 (25 U.S.C. § 476).

3.15 “Gila River Indian Reservation” or “Reservation” shall mean land located within the exterior boundaries of the reservation created under sections 3 and 4 of the Act of February 28, 1859 (11 Stat. 401, Chapter LXVI), and Executive Orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915. The term “Gila River Indian Reservation” or “Reservation” includes those lands located in Sections 16 and 36, Township 4 South, Range 4 East, Gila and Salt River Base and Meridian.

3.16 “Leased Water” shall mean that portion of the Community’s CAP Indian Priority Water that is leased by the Community to the City pursuant to this Lease Agreement.

3.17 “OM&R” shall mean the care, operation, maintenance, and replacement of the Transferred Works or any part thereof.

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3.18 "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of all or any part of the Transferred Works and approved for that purpose by the Secretary or his designee acting in his behalf. CAWCD is the Operating Agency at the time of execution of this Lease Agreement.

3.19 "Other Cities" shall mean the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix and Scottsdale, except for the City defined in Subparagraph 3.8.

3.20 "Party" shall mean an entity represented by a signatory to this Lease Agreement. "Parties" shall mean more than one of these entities. The United States' participation as a Party shall be in the capacity as described in subparagraph 3.25.

3.21 "Secretary" shall mean the Secretary of the United States Department of the Interior.

3.22 "Settlement Agreement" shall mean that agreement entered into among and between the Cities, the Community and the United States, and other parties to that agreement settling specified water rights claims raised by the parties in the Gila River Adjudication Proceedings. This Lease Agreement constitutes exhibit 17.1A to the Settlement Agreement.

3.23 "Subparagraph" shall mean a subparagraph of this Lease Agreement.

3.24 "Transferred Works" shall mean such facilities of the CAP water supply system or of other construction stages as to which OM&R responsibility is transferred from the United States to the Operating Agency.

3.25 "United States" shall mean the United States of America acting: (i) as trustee on behalf of the Community, Members and Allottees, (ii) as owner of the Central Arizona

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Project; and (iii) in no other capacity.

3.26 "Water Lease Charge" shall be that amount of money paid to the Community for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

4.0 LEASE OF WATER

4.1 Subject of Lease. The Community hereby leases to the City of Goodyear seven thousand (7,000) acre-feet per year of Leased Water subject to the terms and conditions of the Community Water Delivery Contract except as agreed to herein. The City shall not be subject to amendments to the Community Water Delivery Contract subsequent to the execution of this Lease Agreement that adversely affect this Lease Agreement unless the City agrees to such amended terms in writing.

4.2 Term of Lease Agreement. The term of this Lease Agreement shall begin thirty (30) days after the Enforceability Date and end one hundred (100) years thereafter. At the Community's sole discretion and with the approval of the Secretary, the Community may enter into a separate lease agreement with the City for Community CAP Water upon such terms and conditions as may be negotiated at that time either during the term of this Lease Agreement or thereafter, provided however, that the term of any such separate lease shall not exceed one hundred (100) years.

4.3 City's Consideration During Initial Term of Lease Agreement.

4.3.1 In consideration for the Leased Water during the term of the Lease Agreement, the City shall pay to the Community the one-time Water Lease Charge which is equal to the result

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obtained by multiplying the ratio determined by dividing the CPI-U published for the month in which the term begins by the CPI-U of 137.9 (as published for the month of December, 1991) ("ratio") by the base payment of One Thousand Two Hundred Three Dollars (\$1,203) ("base payment"), and multiplying that product by seven thousand (7,000) acre-feet ("AF"). An example showing the manner in which the adjustment required by this Subparagraph 4.3.1 shall be made, and the manner in which the total consideration shall be calculated, is as follows:

Assuming, solely for purposes of this example, that the amount of water leased is 1,000 acre-feet per year and that the CPI-U index published for the month in which the date of initial payment of this Lease occurs is 207 ("current period").

Calculation (all numbers rounded to the nearest hundredth):

CPI-U for the month that the term begins	207
CPI-U as of December 1991	137.9
Ratio equals (207 divided by 137.9)	1.50
Base payment equals	\$1,203
Product equals (1.5 x \$1,203)	\$1,804.50
Water Lease Charge equals (\$1,804.5 x 1,000 AF)	\$1,804,500

In the event the CPI-U index is discontinued or not otherwise available as of the month in which the term begins, the Parties shall select a comparable index.

4.3.2 The City may, at its election, pay the Water Lease Charge in full (without interest) within thirty (30) days after the date that the term begins. In lieu of making such payment, the City may elect to make payment in either of the following ways:

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4.3.2.1 An initial payment of one-half (1/2) of the Water Lease Charge (as determined pursuant to Subparagraph 4.3.1) within thirty (30) days after the date that the term begins, with the remaining balance to be paid in four (4) annual payments, payable on the next four (4) anniversary dates of the date that the term begins. Each such payment shall be one-eighth (1/8) of the Water Lease Charge plus interest on the unpaid balance at an annual rate determined as follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its most recently issued Water Renewal Refunding Bonds, as of the Enforceability Date. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent. An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.1 shall be made, is as follows:

Assume, solely for purposes of this example, that the Water Lease Charge is \$1,000,000 and the net interest rate paid by the City of Phoenix on its most recently issued Water Renewal Refunding Bonds, as of the Enforceability Date is five percent (5%). Under this example, the applicable resulting interest rate would be six percent (6%) [$5\% + 1\% = 6\%$] and payments including interest under this Subparagraph 4.3.2.1 would be calculated as follows: The City would make an initial payment of \$500,000. The first annual installment would be in the principal amount of [$\$1,000,000 \times 1/8 = \$125,000$] plus interest on the unpaid balance of [$\$1,000,000 - \$500,000 = \$500,000$] in the amount of [$\$500,000 \times .06 = \$30,000$], for a total payment of [$\$125,000 + \$30,000 = \$155,000$]. The second annual installment would be in the principal amount of \$125,000 plus interest on the unpaid balance of [$\$1,000,000 - \$625,000 = \$375,000$] in the amount of

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$[\$375,000 \times .06 = \$22,500]$, for a total payment of $[\$125,000 + \$22,500 = \$147,500]$. The third annual installment would be in the principal amount of $\$125,000$ plus interest on the unpaid balance of $[\$1,000,000 - \$750,000 = \$250,000]$ in the amount of $[\$250,000 \times .06 = \$15,000]$, for a total payment of $[\$125,000 + \$15,000 = \$140,000]$. The fourth and final annual installment would be in the principal amount of $\$125,000$ plus interest on the unpaid balance of $[\$1,000,000 - \$875,000 = \$125,000]$ in the amount of $[\$125,000 \times .06 = \$7,500]$, for a total payment of $[\$125,000 + 7,500 = \$132,500]$.

4.3.2.2 An initial payment of one-fifteenth (1/15) of the Water Lease Charge (as determined pursuant to Subparagraph 4.3.1) within thirty (30) days after the term begins, with the balance paid in fourteen (14) annual payments payable on the next fourteen (14) anniversary dates of the date that the term begins. Each such payment shall be one-fifteenth of the Water Lease Charge plus interest on the unpaid balance at an annual rate of one percent (1%) over the Chase Manhattan Home Office prime rate (or if such bank ceases to exist, then the home office prime rate of a bank of similar size and stature, or if such bank merges with another institution, then the home office of the merged institution) as of the Enforceability Date. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent. An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.2 shall be made, is as follows:

Assume, solely for purposes of this example, that the Water Lease Charge is $\$1,000,000$ and that the Chase Manhattan Home Office prime rate (or if such bank ceases to exist, then the home office prime rate of a bank of similar size and

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stature, or if such bank merges with another institution, then the home office of the merged institution) on the Enforceability Date is seven percent (7%). Under this example, the applicable resulting interest rate would be eight percent (8%) [7% + 1% = 8%] and the payments including interest under this Subparagraph 4.3.2.2 would be calculated as follows: The City would make an initial payment of \$66,666.67 [$\$1,000,000 \times 1/15 = \$66,666.67$]. The first annual installment would be in the principal amount of [$\$1,000,000 \times 1/15 = \$66,666.67$] plus interest on the unpaid balance of [$\$1,000,000 - \$66,666.67 = \$933,333.33$] in the amount of [$\$933,333.33 \times .08 = \$74,666.67$], for a total payment of [$\$66,666.67 + \$74,666.67 = \$141,333.34$]. The second annual installment would be in the principal amount of \$66,666.67 plus interest on the unpaid balance of [$\$1,000,000 - \$133,333.34 = \$866,666.66$] in the amount of [$\$866,666.66 \times .08 = \$69,333.33$], for a total payment of [$\$66,666.67 + \$69,333.33 = \$136,000.00$]. The third annual installment would be in the principal amount of \$66,666.67 plus interest on the unpaid balance of [$\$1,000,000 - \$200,000.01 = \$799,999.99$] in the amount of [$\$799,999.99 \times .08 = \$64,000.00$], for a total payment of [$\$66,666.67 + \$64,000.00 = \$130,666.67$]. The calculations and annual installments continue until the Water Lease Charge and all interest due have been paid in full.

4.3.3 Under either of the payment options set forth in Subparagraphs 4.3.2.1 and 4.3.2.2, without any prepayment penalty, the City may at any time elect to pay the remaining balance in full

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together with interest on the unpaid balance to the date of such payment.

4.4 OM&R Costs. The City shall pay OM&R costs for the delivery of the Leased Water to the Operating Agency upon the same terms and conditions as are mandated by article 5.1 of the City's CAP M&I Water Service Subcontract No. 5-07-30-W008, as amended, ("City's M&I Water Service Subcontract") except that the City's obligation to pay such OM&R costs shall not begin earlier than the date that the City is entitled to receive water under this Lease Agreement, but in no event unless and until the water is scheduled for delivery by the City. Prior to the date that the term of this Lease Agreement (as described in Subparagraph 4.2) begins, the Community may use the Leased Water in accordance with the Community Water Delivery Contract.

4.5 Other Charges or Payments. Pursuant to section 205(e) of the Act, neither the Community nor the City shall be obligated to pay water service capital charges, M&I subcontract charges, or any other charges, payments, or fees for the Leased Water other than as provided in Subparagraphs 4.3, 4.4, and 4.12, and Paragraph 6.0 of this Lease Agreement.

4.6 Delivery of Water. The United States or the Operating Agency shall deliver the Community's Leased Water to the City as further provided herein; however, neither the United States nor the Operating Agency shall be obligated to make such deliveries if, in the judgment of the Operating Agency or the Secretary, delivery or schedule of deliveries to the City would limit deliveries of CAP water to any CAP Contractor, including the Community, or CAP Subcontractor to a degree greater than would direct deliveries to the Community. The United States or the Operating Agency shall deliver the Leased Water to the City in accordance with water delivery schedules provided by the City to the United States and the Operating Agency, and the Operating Agency shall

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inform the Community of the amount of Leased Water delivered in the previous year. The water ordering procedures contained in article 4.4 of the City's CAP M&I Water Service Subcontract (or any replacement subcontracts) shall apply to the City's ordering of water under this Lease Agreement. In no event shall the United States or the Operating Agency be required to deliver to the City under this Lease Agreement, in any one month, a total amount of Leased Water greater than eleven percent (11%) of the City's annual maximum entitlement under this Lease Agreement; provided, however, that the United States or the Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP water to other CAP Contractors and CAP Subcontractors, as determined by the United States and the Operating Agency if the City agrees to accept such increased deliveries.

4.6.1 Delivery of Water During Times of Shortages. Unless otherwise agreed to in writing, if a time of shortage exists, as described at subparagraphs 8.16.1.1 and 8.16.1.2 of the Settlement Agreement, the amount of Leased Water available to a City under its Lease Agreement shall be reduced by the same percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with subparagraphs 8.16.2.1 and 8.16.2.2 of the Settlement Agreement.

4.7 Use of Leased Water Outside Reservation. The City may use or deliver Leased Water for use outside the boundaries of the Reservation, but may not use, lease, transfer the use of, or otherwise cause the Leased Water to be delivered for use outside of the boundaries of the CAP Service Area, except for use within the City's water service area when the City's water service area extends beyond the CAP Service Area.

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4.8 Conditions Relating to Delivery and Use. The City shall have the right to use Leased Water for any purpose that is consistent with Arizona law and not expressly prohibited by this Lease Agreement, including groundwater recharge as that term is defined in the CAP Repayment Contract. Except to the extent that this Lease Agreement conflicts with the terms of the City's M&I Water Service Subcontract, deliveries of Leased Water to the City and its use by the City shall be subject to the Conditions Relating to Delivery and Use in article 4.3 of the City's CAP M&I Water Service Subcontract. During the term of this Lease Agreement, the following subarticles or articles of the City's CAP M&I Water Service Subcontract shall apply to the City and to the City's use of water under this Lease Agreement: subarticles 4.5(c), 4.5(d), and 5.2(f); articles 4.6, 4.9, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. The City expressly approves and agrees to all the terms presently set out in the CAP Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that CAP Repayment Contract, to the extent not inconsistent with the express provisions of this Lease Agreement.

4.9 Quality of Water. The Transferred Works shall be operated in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. The United States, the Community, and the Operating Agency make no warranty as to the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. The City waives its right to make a claim against the United States, the Operating Agency, the Community, other lessee(s), or CAP Subcontractor(s) because of changes in water quality caused by the commingling of Leased Water with other water.

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4.10 Points of Delivery. The Leased Water to be delivered to the City pursuant to the provisions of this Lease Agreement shall be delivered at turnouts on the CAP water delivery system or such other points that may be agreed upon by the City, the United States and the Operating Agency.

4.11 Community's Covenants. The Community agrees:

(A) To observe and perform all obligations imposed on the Community by the Community Water Delivery Contract which are not assumed by the City so that the City's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the Community Water that would impair the City's rights and duties hereunder;

(C) Not to alter or modify the terms of the Community Water Delivery Contract in such a way as to impair the City's rights hereunder or exercise any right or action permitted by the Community Water Delivery Contract so as to interfere with or change the rights and obligations of the City hereunder; and

(D) Not to terminate or cancel the Community Water Delivery Contract or transfer, convey or permit a transfer or conveyance of such contract so as to cause a termination of, interference with, or modification of the rights and obligations of the Community under it.

4.12 Assignment of Interest in Leased Water.

(A) General. The City may not transfer, assign, sublease or otherwise designate or authorize for the use of others all or any part of the Leased Water without the written approval of the Community and the Secretary.

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(B) Assignment to the Cities. Notwithstanding the prohibition of Subparagraph 4.12(A) above, approval is hereby granted by the Secretary and the Community to the City, if the City is not in default of its payment obligations to the Community, to assign all or any part of its interest in Leased Water under this Lease Agreement to one or more of the Other Cities, or to their successor(s) in interest within the boundaries of their existing or future service areas. Before assigning any part of its interest in Leased Water under this Lease Agreement, the City shall offer such interest to all the Other Cities in equal shares. In the event that any of the Other Cities elects not to take its share of the City's assignment, the water shall then be offered to all of the remaining Other Cities in equal shares until the full amount of the water is so assigned. Such assignment shall be effective only upon the execution, by the assignor City and the assignee of a Voluntary Assignment and Assumption Agreement, the form of which is attached to this Lease Agreement as exhibit 4.12 (exhibit 17.1.1A of the Settlement Agreement). A copy of such Voluntary Assignment and Assumption Agreement shall be provided to the Operating Agency, the Community and the United States.

(C) Recovery of Costs Allowed. The City shall not assign all or any part of its interest in Leased Water hereunder for an amount in excess of that portion of the Water Lease Charge that is attributable to the portion of the Leased Water that is assigned. Nothing in this Lease Agreement shall affect the City's ability to recover actual future costs, if any, incurred for the transportation, treatment, and distribution of the assigned Leased Water.

4.13 Allocation and Repayment of CAP Costs. Pursuant to Section 204(d) of the Act, for the purposes of determining the allocation and repayment of costs of any stages of the CAP

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constructed after December 10, 2004, the costs associated with the delivery of Leased Water shall be nonreimbursable and shall be excluded from the repayment obligation of CAWCD. Pursuant to Section 205(a)(7) of the Act, the costs associated with the construction of the CAP system allocable to the Community shall be nonreimbursable and shall be excluded from the repayment obligation of the Community. Pursuant to Section 205(a)(8) of the Act, no CAP water service capital charges shall be due or payable for the Leased Water.

5. [Intentionally not used].

6. DEFAULT AND REMEDIES

6.1 Events of Default. Any failure by the City to pay the consideration specified in Subparagraph 4.3 above within thirty (30) days after any such payments become due shall constitute a default of the City's obligations under this Lease Agreement.

6.2 Notice of Default. In the event of a default by the City as defined in Subparagraph 6.1 above, the Community shall provide written notice ("Notice of Default") to the City and contemporaneously, shall send copies of such notice to the Other Cities, specifying the default and demanding that the default be cured within ninety (90) days of the notice. Notice shall be given in the manner and to the City officers specified in Subparagraph 8.10 of this Lease Agreement. The Notice of Default shall specifically describe the default and state the amount due from the City, which amount shall be the sum of all payments due the Community that should have been paid, but were not paid ("Default Amount"). The purpose of this Subparagraph is to put the City and the Other Cities on notice as to the time and cause of default. De minimis mistakes in the Notice of Default shall not invalidate the effectiveness of the Notice of Default.

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6.3 Remedies for Failure to Pay. If the City fails to cure a non-payment default in accordance with Subparagraph 6.4(A), and if none of the Other Cities cures the non-payment default pursuant to Subparagraph 6.4(B), the Community may terminate this Lease Agreement. If the Community terminates this Lease Agreement for non-payment, the Community shall be entitled to judgment as provided at Subparagraph 6.4(C), but shall not be entitled to any other remedy as a result of such a default.

6.4 Curing for City's Non-payment. After Notice of Default, the default may be cured as follows:

(A) First Grace Period. During the first thirty (30) days following the Notice of Default ("First Grace Period"), the City shall have the exclusive right to cure any such default by tendering the Default Amount to the Community together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the date that the missed payment became due ("Due Date"). During the first fifteen (15) days following the Notice of Default, the City shall provide written notice to the Other Cities declaring its intent whether it will cure the default, provided that all payments becoming due during the First Grace Period shall be automatically added to and become a part of the Default Amount and interest thereupon shall accrue in accordance with this provision.

(B) Second Grace Period. In the event that the defaulting City has not cured the default within thirty (30) days following the Notice of Default, the City, any of the Other Cities, and/or any combination thereof, may thereafter, but only within sixty (60) days following the end of the First Grace Period ("Second Grace Period"), cure the default by tendering the Default Amount to

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the Community together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the Due Date. Each of the Other Cities that desires to succeed to the interest of the City shall, within sixty (60) days of the Notice of Default, give notice to the Other Cities and the City that it will be a curing city and declare the maximum amount of water that it will lease and succeed to the interest of the City. Each curing city shall succeed to the interest and obligation of the City to the extent of its contribution, and the City and each curing city shall execute an Assignment and Assumption Agreement in the form attached hereto as Exhibit 6.4 (exhibit 17.1.1.B of the Settlement Agreement) whereby the curing city or cities agree to be bound by the terms of this Lease Agreement to the extent of its/their contribution. The defaulting City shall be responsible for any proportionate remainder of any Default amount not cured by the Other Cities pursuant to this Subparagraph. A copy of such Assignment and Assumption Agreement(s) shall be provided by the curing city to the Operating Agency, the Community and the United States. The Community shall accept payment from such curing city or cities in lieu of payment by the City. If the curing cities collectively request more water than what is available for assignment and assumption under this Subparagraph, such curing cities shall succeed to the interest of the Cities in equal shares ("Equal Share Amount"); provided, however, if any of the curing cities requests less water than its Equal Share Amount, then the difference between that curing city's Equal Share Amount and the amount it requested shall be divided among the other curing cities in equal shares.

If the City fails to cure its default within the time-period set forth in this Subparagraph 6.4(B) it shall execute an Assignment and Assumption Agreement, the form of which is attached hereto as exhibit 6.4 with each curing city; provided, however, that if the default is not fully cured by the end

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of the Second Grace Period, the City's right to Leased Water that has not been assigned pursuant to this Subparagraph shall be forfeited and the Community shall be entitled to the remedy described in Subparagraph 6.4(C) of this Lease Agreement *pro rata* for that portion that has not been cured as provided for herein. If the City or the City and any combination of the Other Cities have arranged to cure the default and the curing cities have signed all necessary Assignment and Assumption Agreements, but the City has either failed or refused to sign such agreement(s) before the end of the Second Grace Period, the Assignment and Assumption Agreements(s) shall be self-executing without the need for the City to sign an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4. A cure effected pursuant to this Subparagraph shall constitute full performance of such default payment obligation to the extent of the amount of Leased Water assigned and assumed.

(C) Default Amount. After Notice of Default and after failure to cure as provided for in Subparagraphs 6.4(A) and (B) hereof, the City will be indebted to the Community and the Community will be entitled to judgment for the Default Amount plus an amount equal to three percent (3%) of the balance of the Water Lease Charge not yet due and payable, together with interest on the three percent (3%) of the balance of the Water Lease Charge not yet due and payable, from the time of default until judgment is obtained, and such costs and reasonable attorneys fees as the Community incurs after the due date for obtaining and collecting judgment for the unpaid amounts as a result of such default. The balance of such amount shall continue to accrue interest at the rate of ten percent (10%) per annum until paid in full. Payment of this amount plus such accrued interest as provided in this Subparagraph shall constitute full performance of the City's obligations

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under Subparagraph 4.3 of this Lease Agreement.

7.0 TERMINATION AND SURRENDER OF WATER

7.1 Voluntary Termination of this Lease. After offering to assign the Leased Water to the Cities identified in and in accordance with Subparagraph 4.12, the City may terminate this Lease Agreement at any time by submitting written notice to the Community of its decision to terminate at least one year prior to the time that it intends the Lease Agreement to be terminated, provided, however, the City must receive the written approval of the Community before it may terminate this Lease Agreement pursuant to this Subparagraph 7.1 unless the City has paid the Community at least one-fourth of the Water Lease Charge (plus any interest due) set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the Community's agreement that the City may withdraw its notice. The City shall continue to make all payments required by this Lease Agreement during that one-year period and shall not use any Leased Water beyond the day for which the last payment is intended to pay. If the City terminates this Lease Agreement, all sums paid by the City to the Community prior to the date of termination shall remain the property of the Community and shall be non-refundable to the City.

7.2 Voluntary Surrender of a Portion of the Leased Water. After offering to transfer, assign or sublease the Leased Water to the Other Cities identified in and in accordance with Subparagraph 4.12, the City may elect, at any time during the term of this Lease Agreement to surrender its interest in any portion of the Leased Water by providing written notice to the Community of its decision to surrender such interest at least one year prior to the time that it intends to surrender its interest. However, the City must receive the written approval of the

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Community before it may surrender any portion of its interest under this Lease Agreement pursuant to this Subparagraph 7.2 unless the City has paid the Community at least one-fourth of the Water Lease Charge set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the Community's agreement that the City may withdraw its notification. The City shall continue to make all payments required of this Lease Agreement during that one year period of time and shall not use any Leased Water that will be surrendered pursuant to this Subparagraph 7.2 beyond the day for which the last payment is intended to pay. If the City surrenders its interest in all or any portion of the Leased Water, all sums paid by the City to the Community for such water prior to the date of surrender shall remain the property of the Community and shall be non-refundable to the City. All portions of the Lease Agreement shall remain in effect for all the portions of the Leased Water that are not surrendered. To the extent that the retained portion of the Leased Water has not already been paid for by the City, payment shall be in proportion to the amount of water retained by the City, charged at the per acre-foot charge, including applicable interest, for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement for the years remaining on the term of this Lease Agreement. At the time of the surrender of Leased Water pursuant to this Subparagraph 7.2, the City shall pay to the Community an amount equal to three percent (3%) of the principal payment for the portion of the Leased Water surrendered.

8. GENERAL PROVISIONS

8.1 United States Consent to Lease Agreement. The United States hereby approves and

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consents to this Lease Agreement.

8.2 Lease Agreement Renegotiation. The Parties to this Lease Agreement agree that the Community and the City may renegotiate this Lease Agreement at any time during its term, as provided in Subparagraph 8.5 of the Settlement Agreement.

8.3 Lease Agreement Extension. If the ADWR final rule referenced in Subparagraph 8.5 can be satisfied by an extension of the term of this Lease Agreement to allow Leased Water to be counted in the City's Assured Water supply, the Community agrees to meet with the City and discuss the extension of the term of the Lease Agreement.

8.4 Effective Date. This Lease Agreement shall become effective upon the occurrence of the last of the following events: (1) a date thirty (30) days after the Enforceability Date; (2) ADWR's adoption of a rule, satisfactory to the City, consistent with the Groundwater Code, that enables the City to use Leased Water as part of an Assured Water Supply; and (3) the execution of this Lease Agreement by all Parties.

8.5 Rejection of Lease Agreement. Thirty (30) days after the Enforceability Date a City at its option may, upon written notice to the Community, reject this Lease Agreement whether or not ADWR has adopted a final rule enabling the Cities to use the Leased Water as part of an Assured Water Supply. In the event a City rejects this Lease Agreement pursuant to this Subparagraph 8.5, the City shall have no obligations under this Lease Agreement and the City's entitlement shall be offered to the Other Cities in equal shares until that water is fully leased.

8.6 Enforceability of Lease Agreement. Upon the occurrence of the events listed in Subparagraph 8.4, this Lease Agreement shall be enforceable between the Community and the City

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notwithstanding the performance or non-performance of other provisions of the Settlement Agreement not related to this Lease Agreement. The provisions of the Settlement Agreement that relate to this Lease Agreement include, without limitation, Paragraphs 8.0, and 17.0.

8.7 Invalidity of Lease Agreement. If, as a result of any acts or omissions by a person or entity not a Party to this Lease Agreement, the City's entitlement to Leased Water under this Lease Agreement is determined to be invalid by a final judgment entered over the opposition of the City with the result that the Lease Agreement is deemed null and void, the Community shall refund to the City that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term.

8.8 Approval, Consent and Ratification. Each Party to this Lease Agreement, does by execution of the signature pages hereto, approve, endorse, consent to and ratify this Lease Agreement.

8.9 Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

8.10 Notice. Any notice to be given or payment to be made under this Lease Agreement shall be properly given or made when received by the officer designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows (or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by this Section 8.10):

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- (a) As to the United States:
The Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Regional Director
Western Region Office
Bureau of Indian Affairs
P.O. Box 10
Phoenix, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89005

- (b) As to the Community:

Governor
Gila River Indian Community
P.O. Box 97
Sacaton, Arizona 85247

General Counsel
Gila River Indian Community
P.O. Box 97
Sacaton, Arizona 85247

- (c) As to the Cities:

Chandler City Manager
P.O. Box 4008 Mail Stop 605
Chandler, AZ 85244-4008

Chandler City Attorney
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85225-4008

Glendale City Manager
5850 West Glendale Ave.

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Glendale, AZ 85301

Glendale City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

Goodyear City Manager
190 North Litchfield Road
Goodyear, Arizona 85338

Goodyear City Attorney
190 North Litchfield Road
Goodyear, Arizona 85338

Mesa City Manager
P.O. Box 1466
Mesa, AZ 85211-1466

Mesa City Attorney
20 E. Main St., Ste. 850
P.O. Box 1466
Mesa, Arizona 85211-1466

Peoria City Manager
8401 West Monroe
Peoria, Arizona 85345

Peoria City Attorney
8401 West Monroe
Peoria, Arizona 85345-6560

Phoenix City Manager
200 West Washington, Suite 1200
Phoenix, Arizona 85003

Phoenix City Attorney
200 W. Washington, Suite 1300
Phoenix, Arizona 85003-1611

Scottsdale City Manager
3939 Drinkwater Blvd.
Scottsdale, AZ 85251

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Scottsdale City Attorney
3939 Drinkwater Blvd.
Scottsdale, Arizona 85251

8.11 Governing Law. This Lease Agreement shall be governed by and construed in accordance with applicable Arizona and federal law.

8.12 Waiver. No waiver of any breach of any of the terms or conditions of this Lease Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease Agreement.

8.13 Severability. If any provision or clause of this Lease Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Agreement which can be given effect without the invalid or unenforceable provision, clause or application, and to this end, the provisions and clauses of this Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any Party of its material benefits under this Agreement.

8.14 Construction and Effect. This Lease Agreement and each of its provisions are to be construed fairly and reasonably and not strictly for or against any Party. The Paragraph and Subparagraph titles used in this Lease Agreement are for convenience only and shall not be considered in the construction of this Lease Agreement.

8.15 Successors and Assigns. Each of the terms and conditions of this Lease Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

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8.16 Benefits of Lease Agreement. No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease Agreement or to any benefit that may arise herefrom. This shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

8.17 Third Party Beneficiaries. With the exception of the Other Cities, which shall be third party beneficiaries for enforcement of Subparagraphs 4.12 and 6.4, there shall be no third party beneficiaries of this Lease Agreement.

8.18 Good Faith Negotiations. This Lease Agreement has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease Agreement may be used as either evidence or argument by any Party hereto in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease Agreement.

8.19 [Intentionally not used].

8.20 Attorneys' Fees. In the event of litigation between the Parties to enforce this Lease Agreement, the prevailing Party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, without limitation, court costs, attorneys' fees and discovery costs; provided, however, that this Subparagraph 8.20 shall not apply to the United States.

8.21 Remedies for Default on Matters other than Failure to Pay. The Community may enforce by the remedy of specific performance any City obligation, other than an obligation to pay which is addressed at Subparagraphs 6.3 and 6.4(C) of this Lease Agreement. The Community shall

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not be entitled to any other remedy as a result of such default. Actions to enforce the terms and conditions of this Lease Agreement are subject to the provisions of Subparagraph 8.20.

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IN WITNESS WHEREOF the Parties have executed this Lease Agreement on the date
written above.

FOR THE GILA RIVER INDIAN COMMUNITY

By: Richard P. Harjo

Governor

Attest Jamie J. Stewart

Dated: DEC 09 2005

Approved as to form:

By: Jennifer B. [Signature]

CON-CP-1148-08

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FOR THE UNITED STATES OF AMERICA

By: Robert E. Johnson
Regional Director
Lower Colorado Region
Bureau of Reclamation

Dated: MAY 15 2006

By: [Signature]

Acting Regional Director
Western Region
Bureau of Indian Affairs

Dated: MAY 15 2006

Conc 4-1148-08

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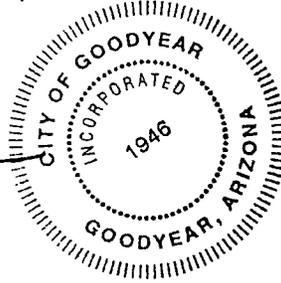
FOR THE CITY OF GOODYEAR

By: *James M. [Signature]*
Title

Dated: May 11, 2006

Attest: *Dee Cochran*

City Clerk



Approved as

to form: *Elizabeth J. [Signature]* for

City Attorney

Con-CF-1148-08
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**Exhibit 4.12 of the Goodyear Lease Agreement
(form of which is exhibit 17.1.1A of the Settlement Agreement)**

**VOLUNTARY ASSIGNMENT AND ASSUMPTION
OF CAP LEASED WATER**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned City of Goodyear ("Assignor"), hereby transfers, assigns and conveys to the City of _____ ("Assignee") ____ percent (___%) of the following:

Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated ____ between Assignor and the Gila River Indian Community (the "Community") and the United States ("Lease Agreement"). This ____ percent (___%) equals ____ acre-feet of Leased Water.

1. Voluntary Assignment and Assumption Pursuant to Subparagraph 4.12 of Lease Agreement.

This Voluntary Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, subparagraph 4.12 of the Lease Agreement. Except as provided in paragraph 2 of this Voluntary Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. Assumption of Rights and Obligations Under Lease Agreement. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's

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percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor's Lease Agreement for the period prior to the date hereof and Assignee shall have no liability therefor. Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date of this Voluntary Assignment and Assumption Agreement for the assigned portion of the Leased Water. Nothing herein shall affect the Community's rights as against the Assignor for acts or omissions arising before the date of this Voluntary Assignment and Assumption Agreement.

3. **Other Acts.** Each party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Voluntary Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the Community pursuant to paragraph 17.0 of the Settlement Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned to Assignee by this Voluntary Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

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5. **Counterparts.** This Voluntary Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Voluntary Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Voluntary Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto.

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IN WITNESS WHEREOF the parties have executed this Voluntary Assignment and Assumption Agreement on the ____ day of _____, 200_.

CITY OF _____ (Assignor)

By _____

Mayor

Dated: _____

Attest: _____

City Clerk

Approved as to form: _____

City Attorney

CITY OF _____ (Assignee)

By _____

Mayor

Dated: _____

Attest: _____

City Clerk

Approved as to form: _____

City Attorney

The parties to this Voluntary Assignment and Assumption Agreement certify that a copy of this Voluntary Assignment and Assumption Agreement was provided in accordance with subparagraphs 4.12 (B) and 8.10 of the Lease Agreement to the Gila River Indian Community, the United States and the Operating Agency on _____, 2___.

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Exhibit 6.4 of the Goodyear Lease Agreement
(form of which is exhibit 17.1.1B of the Settlement Agreement)

ASSIGNMENT AND ASSUMPTION OF CAP LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned City of Goodyear ("Assignor"), hereby transfers, assigns and conveys to the City of _____ ("Assignee") ___ percent (___%) of the following:

Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated ____ between Assignor and the Gila River Indian Community (the "Community") and the United States ("Lease Agreement"). This ___ percent (___%) equals ___ acre-feet of Leased Water.

1. **Assignment and Assumption Pursuant to Subparagraph 6.4 of Lease Agreement.** This Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, subparagraph 6.4 of the Lease Agreement. Except as provided in Paragraph 2 of this Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. **Assumption of Rights and Obligations Under Lease Agreement.** Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and

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obligations arise from and after the date hereof, except that Assignee agrees to pay and be responsible to the Community for the Assignee's share of the Default Amount set forth in subparagraph 6.2 of the Lease Agreement. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor under the Lease Agreement for the period prior to the date of default under subparagraph 6.1 of the Lease Agreement and Assignee shall have no liability therefor. For the assigned portion of the Leased Water, Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date that this Assignment and Assumption Agreement is effective. Nothing herein shall affect the Community's rights as against the Assignor for acts or omissions arising before the date of this Assignment and Assumption Agreement.

3. **Other Acts.** Each party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the Community pursuant to paragraph 17.0 of the Settlement Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned by this Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as

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provided for herein.

5. **Counterparts.** This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto and the Assignee has paid its share of the Default Amount in accordance with subparagraph 6.4 B of the Lease Agreement, or if not signed by Assignor, upon Assignee's signature in accordance with the provisions of subparagraph 6.4 B of the Lease Agreement describing "self execution", and the Assignee's payment of its share of the Default Amount.

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IN WITNESS WHEREOF the parties have executed this Assignment and Assumption Agreement on the ____ day of _____, 200_.

CITY OF _____ (Assignor)

By _____

Title

Dated: _____

Attest: _____

City Clerk

Approved as to form: _____

City Attorney

CITY OF _____ (Assignee)

By _____

Mayor

Dated: _____

Attest: _____

City Clerk

Approved as to form: _____

City Attorney

The parties to this Assignment and Assumption Agreement certify that a copy of this Assignment and Assumption Agreement was provided in accordance with subparagraphs 6.4(B) and 8.10 of the Lease Agreement to the Gila River Indian Community, the United States and the Operating Agency

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on _____, 2_____.

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