

ORIGINAL

NIA Subcontract No. 21-XX-30-W0703

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2
3 UNITED STATES
4 DEPARTMENT OF THE INTERIOR
5 BUREAU OF RECLAMATION

6 SUBCONTRACT BETWEEN THE UNITED STATES AND
7 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT

8 PROVIDING FOR WATER SERVICE

9 CENTRAL ARIZONA PROJECT

10 1. PREAMBLE:

11 THIS SUBCONTRACT, made this 20th day of September, 2021, in
12 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory
13 thereof or supplementary thereto, including but not limited to the Boulder Canyon Project
14 Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of
15 August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12,
16 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of
17 September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act
18 (118 Stat. 3478) ("AWSA"), all collectively hereinafter referred to as the "Federal
19 Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to
20 as the "United States" or "Contracting Officer" acting through the Secretary of the Interior,
21 hereafter referred to as "Secretary", the CENTRAL ARIZONA WATER CONSERVATION
22 DISTRICT, hereinafter referred to as the "Contractor," a water conservation district
23 organized under the laws of Arizona, with its principal place of business in Phoenix,
24 Arizona. For the purposes of this Subcontract, and as described in the Explanatory
25 Recitals below, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, acting in
26 its capacity as a groundwater replenishment authority pursuant to A.R.S. §§ 48-3771,

1 et. seq., and commonly referred to as the CENTRAL ARIZONA GROUNDWATER
2 REPLENISHMENT DISTRICT shall be referred to herein as the "Subcontractor".

3 **WITNESSETH, THAT:**

4 **2. EXPLANATORY RECITALS:**

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

11 **WHEREAS**, pursuant to the provisions of Arizona Revised Statutes §§ 48-
12 3701, *et seq.*, the Contractor has been organized with the power to enter into a contract
13 or contracts with the Secretary to accomplish the purposes of Arizona Revised Statutes,
14 §§ 48-3701, *et seq.*; and

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

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

25 **WHEREAS**, as of the date of execution of this Subcontract, and pursuant
26 to the provisions of the Contract between the United States of America and the Central

1 Arizona Water Conservation District for the Transfer of Operation and Maintenance of
2 Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended (“O&M
3 Transfer Agreement”) CAWCD is the Operating Agency; and

4 **WHEREAS**, the United States and CAWCD have entered into the Stipulated
5 Judgment and the Stipulation for Judgment (including any exhibits to those documents)
6 entered on November 21, 2007, in the United States District Court for the District of Arizona
7 in the consolidated civil action styled Central Arizona Water Conservation District v. United
8 States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC
9 (“Stipulation”), which modifies the Repayment Contract in certain respects; and

10 **WHEREAS**, in 1993, the Arizona legislature created a groundwater
11 replenishment authority to be operated by CAWCD throughout its three-county service
12 area, referred to as the Central Arizona Groundwater Replenishment District (“CAGRDR”).
13 The purpose of CAGRDR is to provide a mechanism for landowners, developers and water
14 providers to satisfy certain provisions of assured water supply rules adopted by the Arizona
15 Department of Water Resources (“ADWR”) pursuant to Title 45, Chapter 2 of the Arizona
16 Revised Statutes; and

17 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
18 to 96,295 acre-feet of CAP NIA Priority Water to ADWR for further allocation; and

19 **WHEREAS**, on January 16, 2014, ADWR recommended to the Secretary
20 the reallocation of 46,629 acre-feet of CAP NIA Priority Water for municipal and industrial
21 uses; and

22 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
23 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
24 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
25 15, 2021); and
26

1 **WHEREAS**, the Subcontractor is in need of a water supply to fulfill its
2 groundwater replenishment obligations and desires to subcontract with the United States
3 and the Contractor for water service from CAP NIA Priority Water supplies available under
4 the Central Arizona Project; and

5 **WHEREAS**, in accordance with the terms of this Subcontract, water shall
6 be available for delivery to the Subcontractor;

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

9 **3. DEFINITIONS:**

10 Definitions included in the Repayment Contract and the Stipulation are
11 applicable to this Subcontract. The first letters of terms so defined are capitalized herein.
12 In addition, the following definitions shall apply to this 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) "CAP Indian Priority Water" shall mean that water within the Available
18 CAP Supply having an Indian delivery priority.

19 (c) "CAP M&I Priority Water" shall mean that water within the Available
20 CAP Supply having a municipal and industrial delivery priority.

21 (d) "CAP NIA Priority Water" shall mean that water within the available
22 CAP Supply having a non-Indian agricultural delivery priority.

23 (e) "Operating Agreement" shall mean the Operating Agreement
24 between the United States of America and the Central Arizona Water Conservation District
25 for Operation and Maintenance of the Central Arizona Project, dated June 15, 2000.
26

1 (f) "System Use Agreement" shall mean the Central Arizona Project
2 System Use Agreement between the United States and the Central Arizona Water
3 Conservation District, Agreement No. 17-XX-30-W0622, dated February 2, 2017,
4 including any amendments thereto.

5 (g) "Exhibit A" shall mean the restatement of Paragraph 4 of Amendment 2
6 to the Repayment Contract dated November 30, 2007, a copy of which is attached
7 hereto and hereby by this reference made a part of this Subcontract.
8

9 **4. DELIVERY OF WATER:**

10 4.1 Obligations of the United States.

11 (a) Subject to the terms, conditions, and provisions set forth herein and
12 in the Repayment Contract, during such periods as it operates and maintains the Project
13 Works, the United States shall deliver Project Water for M&I use by the Subcontractor.
14 The United States shall use all reasonable diligence to make available to the
15 Subcontractor the quantity of Project Water specified in the schedule submitted by the
16 Subcontractor in accordance with Article 4.4. After transfer of OM&R to the Operating
17 Agency, the United States shall make deliveries of Project Water to the Operating Agency
18 which shall make subsequent delivery to the Subcontractor as provided herein.

19 (b) Except as expressly provided in this Subcontract, the rights and
20 obligations of the United States and CAWCD under the Repayment Contract and the
21 Stipulation are not affected by the execution and operation of this Subcontract. Nothing in
22 this Subcontract shall be construed to increase the quantity of water that the United States
23 is obligated to deliver to CAWCD under the Repayment Contract or the Stipulation.

24 4.2 Term of Subcontract. This Subcontract shall become effective upon
25 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
26 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority

1 water service capital charges and 9(d) debt charges as required by the Contractor. This
2 Subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
3 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
4 terms of this Subcontract for a period of 100 years beginning January 1 of the Year
5 following that in which the Subcontract becomes effective; provided, that this Subcontract
6 may be renewed upon written request by the Subcontractor upon terms and conditions of
7 renewal to be agreed upon not later than 1 year prior to the expiration of this Subcontract;
8 and provided, further, that such terms and conditions shall be consistent with Article 9.9
9 of the Repayment Contract.

10 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
11 under this Subcontract is conditioned on the following, and the Subcontractor hereby
12 agrees that:

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

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

21 (c) The Subcontractor shall not pump, or within its legal authority,
22 permit others to pump ground water from within the exterior boundaries of the
23 Subcontractor's service area, which has been delineated on a map filed with the
24 Contractor and approved by the Contractor and the Contracting Officer, for use outside of
25 said service area unless such pumping is permitted under Title 45, Chapter 2, Arizona
26 Revised Statutes, as it may be amended from time to time, and the Contracting Officer,

1 the Contractor, and the Subcontractor shall agree, or shall have previously agreed, that a
2 surplus of ground water exists and drainage is or was required; provided, however, that
3 such pumping may be approved by the Contracting Officer and the Contractor, and
4 approval shall not be unreasonably withheld, if such pumping is in accord with the Basin
5 Project Act and upon submittal by the Subcontractor of a written certification from ADWR
6 or its successor agency that the pumping and transportation of ground water is in accord
7 with Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to
8 time.

9 (d) The Subcontractor shall not sell, lease, exchange, forbear or
10 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
11 of Project Water within the State of Arizona covered by separate agreements approved by
12 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
13 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
14 this does not prohibit the resale or exchange of Project Water within the State of Arizona
15 pursuant to Subarticle 4.3(e).

16 (e) (i) Project Water scheduled for delivery in any Year under
17 this Subcontract may be used by the Subcontractor or resold, or exchanged by the
18 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer
19 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
20 amount in excess of that which the Subcontractor is obligated to pay under this
21 Subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
22 Contractor for application against the Contractor's Repayment Obligation to the United
23 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
24 of transportation, treatment, and distribution, including but not limited to capital costs and
25 OM&R costs.
26

1 (ii) Project Water scheduled for delivery in any Year under
2 this Subcontract that cannot be used, resold, or exchanged by the Subcontractor may be
3 made available by the Contracting Officer and Contractor to other users. If such Project
4 Water is sold to or exchanged with other users, the Subcontractor shall be relieved of its
5 payments hereunder only to the extent of the amount paid to the Contractor by such other
6 users, but not to exceed the amount the Subcontractor is obligated to pay under this
7 Subcontract for said water.

8 (iii) In the event the Subcontractor or the Contracting Officer
9 and the Contractor are unable to sell any portion of the Subcontractor's Project Water
10 scheduled for delivery and not required by the Subcontractor, the Subcontractor shall be
11 relieved of the pumping energy portion of the OM&R charges associated with the
12 undelivered water as determined by the Contractor.

13 (f) Notwithstanding any other provision of this Subcontract,
14 Project Water shall not be delivered to the Subcontractor unless and until the
15 Subcontractor has obtained final environmental clearance from the United States for the
16 system or systems through which Project Water is to be conveyed after delivery to the
17 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
18 distribution systems, treatment, storage, and other facilities through or in which Project
19 Water is conveyed, stored, or treated after delivery to the Subcontractor at the
20 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
21 based upon a review by the United States of the Subcontractor's plans for taking and using
22 Project Water and will be given or withheld by the United States in accordance with the
23 Final Environmental Assessment - Arizona Department of Water Resources
24 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
25 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
26 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional

1 action(s) required on behalf of the Subcontractor in order to obtain final environmental
2 clearance from the United States will be identified to the Subcontractor by the United
3 States, and no Project Water shall be delivered to the Subcontractor unless and until the
4 Subcontractor has completed all such action(s) to the satisfaction of the United States.

5 4.4 Procedure for Ordering Water.

6 (a) The amounts, times, and rates of delivery of Project Water to
7 the Subcontractor shall be in accordance with a water delivery schedule for that Year.
8 Such schedule shall be determined in the following manner:

9 (i) On or before October 1 of each Year, the Subcontractor
10 shall submit in writing to the Contractor a water delivery schedule indicating the amounts
11 of Project Water desired by the Subcontractor during each month of the following Year
12 along with a preliminary estimate of Project Water desired for the succeeding 2 years.

13 (ii) Upon receipt of the schedule, the Contractor shall
14 review it and, after consultation with the Subcontractor, and except as provided in
15 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
16 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
17 with the delivery capability of the Project, considering, among other things, the availability
18 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
19 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
20 to the Subcontractor.

21 (iii) If the Contracting Officer determines, in consultation
22 with the Operating Agency, that the amount of Project Water that will be available for
23 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
24 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
25 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
26 Subcontractor for that following Year. Within five (5) business days of such notice, the

1 Subcontractor shall submit an amended water delivery schedule to the Contractor
2 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
3 following Year up to the reduced quantity available. Upon receipt of the amended
4 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
5 shall make only such modifications to the schedule as are necessary to ensure that the
6 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
7 capability of the Project, considering, among other things, the availability of water, the
8 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
9 provided, that this provision shall not be construed to reduce annual deliveries to the
10 Subcontractor, except as required by Article 4.7.

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

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

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

1 (d) In no event shall the Contracting Officer or the Contractor be
2 required to deliver to the Subcontractor from the Water Supply System in any one month
3 a total amount of Project Water greater than eleven percent (11%) of the Subcontractor's
4 maximum entitlement; provided, however, that the Contractor may deliver a greater
5 percentage in any month if such increased delivery is compatible with the overall delivery
6 of Project Water as determined by the Contracting Officer and the Contractor and if the
7 Subcontractor agrees to accept such increased deliveries.

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

10 (a) The water to be furnished to the Subcontractor pursuant to this
11 Subcontract shall be delivered at existing turnouts, or new turnouts at such points on the
12 Water Supply System as may be agreed upon in writing by the Contracting Officer and the
13 Contractor pursuant to Article 6(d) of the O&M Transfer Contract and Section 12.1 of the
14 Operating Agreement.

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

25 (c) All water delivered from the Water Supply System shall be
26 measured with equipment furnished, installed, operated and maintained by the United

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

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

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

1 and employees, shall be liable for damages when, for any reason whatsoever, any such
2 temporary discontinuance or reduction in delivery of water occurs. If any such
3 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
4 water than what has been paid for in advance, the Contractor shall reconcile any such
5 advance payments as provided in Subarticle 5.1(c).
6

7 4.7 Priority in Case of Shortage. As soon as is practicable after
8 October 1, the Contracting Officer shall determine, in consultation with the Operating
9 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
10 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
11 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
12 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
13 Exhibit A.
14

15 (a) Any Available CAP Supply remaining after all requests for
16 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
17 shall become available for delivery as CAP NIA Priority Water.

18 (b) If the Available CAP Supply is insufficient to meet the requests
19 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
20 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
21 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
22 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
23 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
24 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
25 consistent with the settlements authorized, ratified and confirmed in the AWSA.
26

1 (c) Any CAP NIA Priority Water remaining after the pro-rata
2 distribution set forth in Subarticle 4.7(b), will be made available to CAP NIA Priority Water
3 Contractors and Subcontractors on a pro-rata on the basis of the difference between water
4 requested for delivery and the volume not otherwise available under Subarticle 4.7(b).
5

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

9 4.8 Secretarial Control of Return Flow.

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

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

1 (b) The price charged for the Return Flow may cover the cost
2 incurred by the Subcontractor for Project Water plus the cost required to make the Return
3 Flow usable. If the price received for the Return Flow is greater than the costs incurred
4 by the Subcontractor, as described above, the excess amount shall be forthwith returned
5 by the Subcontractor to the Contractor for application against the Contractor's Repayment
6 Obligation to the United States. Costs required to make Return Flow usable shall include
7 but not be limited to capital costs and OM&R costs including transportation, treatment, and
8 distribution, and the portion thereof that may be retained by the Subcontractor shall be
9 subject to the advance approval of the Contractor and the Contracting Officer.
10

11 (c) Any Return Flow captured by the United States and
12 determined by the Contracting Officer and the Contractor to be suitable and available for
13 use by the Subcontractor may be delivered by the United States or Operating Agency to
14 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
15 hereunder and such water shall be accounted and paid for pursuant to the provisions
16 hereof.
17

18 (d) All capture, recapture, use, reuse, and sale of Return Flow
19 under this article shall be in accord with Arizona water law unless such law is inconsistent
20 with the Congressional directives applicable to the Central Arizona Project.
21

22 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
23 this Subcontract, shall comply with all applicable water and air pollution laws and
24 regulations of the United States and the State of Arizona and shall obtain all required
25 permits or licenses from the appropriate Federal, State, or local authorities.
26

1 4.10 Quality of Water. The operation and maintenance of Project facilities
2 shall be performed in such manner as is practicable to maintain the quality of water made
3 available through such facilities at the highest level reasonably attainable as determined
4 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
5 Agency warrants the quality of water and is under no obligation to construct or furnish
6 water treatment facilities to maintain or better the quality of water. The Subcontractor
7 waives its right to make a claim against the United States, the Operating Agency, and the
8 Contractor, because of changes in water quality caused by the commingling of Project
9 Water with other water.
10

11 4.11 Exchange Water.

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

22 (b) If, in the event of reductions to the Available CAP Supply, the
23 Subcontractor has yielded water from other surface water sources in exchange for
24 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
25 the Subcontractor shall have first priority against other users supplied with Project Water
26

1 that have not yielded water from other surface water sources but only in quantities
2 adequate to replace the water so yielded.

3 4.12 Entitlement to CAP NIA Priority Water.

4 (a) The Subcontractor is entitled to delivery of an annual
5 maximum of 18,185 acre-feet of CAP NIA Priority Water under this Subcontract for M&I
6 uses including but not limited to underground storage.
7

8 (b) The Subcontractor's entitlement to CAP NIA Priority Water
9 under this Subcontract shall be separate from any other entitlement to Project Water
10 available to the Subcontractor. This Subcontract neither modifies nor supersedes the
11 Subcontractor's existing entitlements or subcontracts, if any.

12 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
13 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
14 NIA Priority Water.
15

16 **5. PAYMENTS:**

17 5.1 Water Service Charges for Payment of Operation, Maintenance, and
18 Replacement Costs.

19 (a) Prior to October 1 of each Year, the Contractor shall notify the
20 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
21 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
22 shall be accompanied by data and computations relied on by the Contractor in determining
23 the amounts of the estimated OM&R costs and shall be subject to joint review by the
24 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
25 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
26

1 to cover the above-mentioned costs during such period, the Contractor may, at the
2 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
3 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
4 all remaining monthly invoices.

5 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
6 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
7 United States or the Operating Agency. The Contractor will submit monthly invoices for
8 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
9 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
10 discretion, offer equalized or alternative payment schedules.

11 (c) By March 1 of each Year, the Contractor shall reconcile amounts
12 paid in the prior Year by the Subcontractor to the volume of water delivered and any
13 applicable provisions of Subarticle 4.3(e).

14 (d) By May 1 of each Year, the Contractor shall determine the actual
15 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
16 calculate the difference between the actual OM&R rate and the published OM&R rate.
17 Based on the Subcontractor's actual deliveries and any applicable provisions of subarticle
18 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
19 difference.

20 5.2 M&I Water Service Charges.

21 (a) Subject to the provisions of Article 5.4 hereof and in addition
22 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
23 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
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1 make payment to the Contractor in equal semiannual installments of an M&I Water service
2 capital charge based on a maximum entitlement of 18,185 acre-feet per year multiplied by
3 the rate established by the Contractor for that year.

4 (b) The M&I Water service capital charge may be adjusted
5 periodically by the Contractor as a result of repayment determinations provided for in the
6 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
7 per acre-foot shall not be greater than the amount required to amortize Project capital
8 costs allocated to the M&I function and determined by the Contracting Officer to be a part
9 of the Contractor's Repayment Obligation. Such amortization shall include interest at
10 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
11 charge, notice thereof shall be given by the Contractor to the United States and to the
12 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
13 becomes effective. The M&I Water service capital charge payment for the initial Year shall
14 be advanced to the Contractor in equal semiannual installments on or before December 1
15 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
16 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
17 made in equal semiannual installments on or before the December 1 preceding said
18 subsequent Year and the June 1 of said subsequent Year as may be specified by the
19 Contractor in written notices to the Subcontractor.

20 (c) Payment of all M&I Water service capital and corresponding
21 OM&R charges becoming due hereunder prior to or on the dates stipulated in Articles 5.1
22 and 5.2 is a condition precedent to receiving Project Water under this Subcontract.
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1 (d) All payments to be made to the Contractor or the United States
2 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
3 fall due from revenues legally available to the Subcontractor for such payment from the
4 sale of water to its water users and from any and all other sources which might be legally
5 available; Provided, That no portion of the general taxing authority of the Subcontractor,
6 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
7 this Subcontract, nor shall such sources be liable for the payments, contributions, and
8 other costs pursuant to this Subcontract, or to satisfy any obligation hereunder unless duly
9 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
10 applicable budget year; and Provided, further, That no portion of this agreement shall ever
11 be construed to create an obligation superior in lien to or on a parity with the
12 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
13 impose such necessary water service charges and rates and use all the authority and
14 resources available to it to collect all such necessary water service charges and rates in
15 order that the Subcontractor may meet its obligations hereunder and make in full all
16 payments required under this Subcontract on or before the date such payments become
17 due.
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20 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
21 of water under this Subcontract from Project facilities during any period in which the
22 Subcontractor may be in arrears in the payment of any charges due the Contractor under
23 this Subcontract. The Contractor may sell to another entity any water determined to be
24 available under the Subcontractor's entitlement for which payment is in arrears; provided,
25 however, that the Subcontractor may regain the right to use any unsold portion of the water
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1 determined to be available under the original entitlement upon payment of all delinquent
2 charges plus any difference between the Subcontractual obligation and the price received
3 in the sale of the water by the Contractor and payment of charges for the current period.

4 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
5 refuses in any Year to accept delivery of the quantity of water available for delivery to and
6 scheduled for delivery by the Subcontractor pursuant to this Subcontract, said failure or
7 refusal shall not relieve the Subcontractor of its obligation to make the payments required
8 in this Subcontract under Article 5.1, except as provided in Article 4.3(e). The
9 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
10 regardless of the quantity of water scheduled or available for delivery in any Year.

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

2 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
3 Repayment Contract, the United States has agreed to construct and, in the absence of an
4 approved Operating Agency, to operate and maintain the works of the Central Arizona
5 Project and to deliver Project Water to the various subcontractors within the Project
6 Service Area; and the Contractor has obligated itself for the payment of various costs,
7 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
8 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
9 agrees to all the terms presently set out in the Repayment Contract including Subarticle
10 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
11 agrees to be bound by the actions to be taken and the determinations to be made under
12 that Repayment Contract and the Stipulation, except as otherwise provided herein.

13 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
14 exchanges with Indian entities that have received an allocation of Project Water and
15 receive all benefits from the exchange.

16 6.3 Notices. Any notice, demand or request authorized or required by
17 this Subcontract shall be deemed to have been given when mailed, postage prepaid, or
18 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,
19 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
20 Subcontractor; to the Central Arizona Water Conservation District, P.O. Box 43020,
21 Phoenix, Arizona 85080, on behalf of the United States. The designation of the addressee
22 or the address may be changed by notice given in the same manner as provided in this
23 Article for other notices.
24

25 6.4 Change in Operating Agency. If at any time during the term of this
26 Subcontract the Contractor and the Operating Agency are not the same entity, the

1 Contractor agrees to coordinate and cooperate with the Operating Agency on any
2 obligations of the Contractor under this Subcontract that pertain to the operation of the
3 Central Arizona Project and delivery of Project Water hereunder.

4 6.5 Rules, Regulations, and Determinations.

5 (a) The Contracting Officer shall have the right to make, after an
6 opportunity has been offered to the Contractor and Subcontractor for consultation, rules
7 and regulations consistent with the provisions of this Subcontract, the laws of the United
8 States and the State of Arizona, to add to or to modify them as may be deemed proper
9 and necessary to carry out this Subcontract, and to supply necessary details of its
10 administration which are not covered by express provisions of this Subcontract. The
11 Contractor and Subcontractor shall observe such rules and regulations.

12 (b) Where the terms of this Subcontract provide for action to be
13 based upon the opinion or determination of any party to this Subcontract, whether or not
14 stated to be conclusive, said terms shall not be construed as permitting such action to be
15 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
16 event that the Contractor or Subcontractor questions any factual determination made by
17 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
18 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
19 parties.
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23 6.6 Officials Not to Benefit.

24 (a) No Member of or Delegate to Congress or Resident
25 Commissioner shall be admitted to any share or part of this Subcontract or to any benefit
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1 that may arise herefrom. This restriction shall not be construed to extend to this
2 Subcontract if made with a corporation or company for its general benefit.

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

6
7 6.7 Assignment Limited--Successors and Assigns Obligated. The
8 provisions of this Subcontract shall apply to and bind the successors and assigns of the
9 parties hereto, but no assignment or transfer of this Subcontract or any part or interest
10 therein shall be valid until approved by the Contracting Officer.

11 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
12 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
13 court of the United States or the State of Arizona which would otherwise be available to
14 such parties even though provisions herein may declare that determinations or decisions
15 of the Secretary or other persons are conclusive or (b) as depriving any party of any
16 defense thereto which would otherwise be available.

17
18 6.9 Books, Records, and Reports. The Subcontractor shall establish and
19 maintain accounts and other books and records pertaining to its financial transactions,
20 land use and crop census, water supply, water use, changes of Project works, and to other
21 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
22 Contracting Officer in such form and on such date or dates as he may require. Subject to
23 applicable Federal laws and regulations, each party shall have the right during office hours
24 to examine and make copies of each other's books and records relating to matters covered
25 by this Subcontract.
26

1 6.10 Equal Employment Opportunity.

2 During the performance of this Subcontract, the Subcontractor agrees as
3 follows:

4 (a) The Subcontractor will not discriminate against any employee or
5 applicant for employment because of race, color, religion, sex, sexual orientation, gender
6 identity, or national origin. The Subcontractor will take affirmative action to ensure that
7 applicants are employed, and that employees are treated during employment, without
8 regard to their race, color, religion, sex, sexual orientation, gender identity, or national
9 origin. Such action shall include, but not be limited to the following: employment,
10 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or
11 termination; rates of pay or other forms of compensation; and selection for training,
12 including apprenticeship. The Subcontractor agrees to post in conspicuous places,
13 available to employees and applicants for employment, notices to be provided by the
14 Contracting Officer setting forth the provisions of this nondiscrimination clause.
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17 (b) The Subcontractor will, in all solicitations or advancements for
18 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
19 will receive consideration for employment without regard to race, color, religion, sex,
20 sexual orientation, gender identity, or national origin.
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22 (c) The Subcontractor will not discharge or in any other manner
23 discriminate against any employee or applicant for employment because such employee
24 or applicant has inquired about, discussed, or disclosed the compensation of the
25 employee or applicant or another employee or applicant. This provision shall not apply to
26 instances in which an employee who has access to the compensation information of other

1 employees or applicants as a part of such employee's essential job functions discloses
2 the compensation of such other employees or applicants to individuals who do not
3 otherwise have access to such information, unless such disclosure is in response to a
4 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
5 action, including an investigation conducted by the employer, or is consistent with the
6 contractor's legal duty to furnish information.
7

8 (d) The Subcontractor will send to each labor union or representative
9 of workers with which he has a collective bargaining agreement or other contract or
10 understanding, a notice, to be provided by the agency Contracting Officer, advising the
11 labor union or workers' representative of the Subcontractor's commitments under section
12 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
13 notice in conspicuous places available to employees and applicants for employment.
14

15 (e) The Subcontractor will comply with all provisions of Executive
16 Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of
17 the Secretary of Labor.

18 (f) The Subcontractor will furnish all information and reports required
19 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
20 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
21 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
22 of investigation to ascertain compliance with such rules, regulations, and orders.
23

24 (g) In the event of the Subcontractor's noncompliance with the
25 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
26 this Subcontract may be canceled, terminated or suspended in whole or in part and the

1 Subcontractor may be declared ineligible for further Government contracts in accordance
2 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
3 other sanctions may be imposed and remedies invoked as provided in Executive Order
4 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
5 or as otherwise provided by law.

6
7 (h) The Subcontractor will include the provisions of paragraphs (a)
8 through (h) in every subcontract or purchase order unless exempted by the rules,
9 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
10 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
11 upon each subcontractor or vendor. The Subcontractor will take such action with respect
12 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
13 means of enforcing such provisions, including sanctions for noncompliance: Provided,
14 however, that in the event the Subcontractor becomes involved in, or is threatened with,
15 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
16 may request the United States to enter into such litigation to protect the interests of the
17 United States.
18

19 6.11 Compliance With Civil Rights Laws and Regulations

20 (a) The Subcontractor shall comply with Title VI of the Civil Rights
21 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
22 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
23 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with
24 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.) and any other
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1 applicable civil rights laws, and with the applicable implementing regulations and any
2 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

3 (b) These statutes prohibit any person in the United States from being
4 excluded from participation in, being denied the benefits of, or being otherwise subjected
5 to discrimination under any program or activity receiving financial assistance from the
6 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
7 executing this Subcontract, the Subcontractor agrees to immediately take any measures
8 necessary to implement this obligation, including permitting officials of the United States
9 to inspect premises, programs, and documents.
10

11 (c) The Subcontractor makes this agreement in consideration of and
12 for the purpose of obtaining any and all Federal grants, loans, contracts, property
13 discounts, or other Federal financial assistance extended after the date hereof to the
14 subcontractor by the Bureau of Reclamation, including installment payments after such
15 date on account of arrangements for Federal financial assistance which were approved
16 before such date. The Subcontractor recognizes and agrees that such Federal assistance
17 will be extended in reliance on the representations and agreements made in this article
18 and that the United States reserves the right to seek judicial enforcement thereof.
19

20 (d) Complaints of discrimination against the Subcontractor shall be
21 investigated by the Contracting Officer's Office of Civil Rights.
22


23 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
24 a final decree of the proper court of the State of Arizona approving and confirming the
25 Subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
26 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of

1 such decree and of all pertinent supporting records. This Subcontract shall not be binding
2 on the United States, the Contractor, or the Subcontractor until such final decree has been
3 entered.

4 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
5 or advance of any money or the performance of any work by the United States hereunder
6 which may require appropriation of money by the Congress or the allotment of funds shall
7 be contingent upon such appropriation or allotment being made. The failure of the
8 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
9 the Subcontractor from any obligation under this Subcontract. No liability shall accrue to
10 the United States in case such funds are not appropriated or allotted.
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1 IN WITNESS WHEREOF, the parties hereto have executed this Subcontract
2 No. 21-XX-30-W0703 the day and year first above-written.
3

4 THE UNITED STATES OF AMERICA

6 By: 
7 _____
8 Regional Director
9 Lower Colorado Basin Region
10 Bureau of Reclamation

11 CENTRAL ARIZONA WATER
12 CONSERVATION DISTRICT

13
14 Attest: 
15 _____
16 Secretary


17 By: 
18 _____
19 President
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EXHIBIT A

Paragraph 8.11 of the Repayment Contract, as amended by Paragraph 4 of the Repayment Contract, Amendment No. 2 (Nov. 30, 2007), Contract No. 14-06-W-245

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

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

- (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; and
- (iii) 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.

(b) On or after January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements as set forth in subparagraphs (i) through (iv) below:

- (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 delivery as CAP Indian Priority Water shall be determined in accordance with the following equation and the remainder shall be available for delivery as CAP M&I Priority Water:

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

Where

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

E=the sum of entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraphs 8.11 (a) or (b), whichever is applicable; and

W=the Available CAP Supply

Example A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraph 8.11 (a) is nine hundred eighty-one thousand nine hundred two (343,079 + 638,823 + 0) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) acre-feet plus 25.43800% of the Available CAP Supply.

Example B. If, after January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraph 8.11 (b) is one million twenty-nine thousand three hundred twenty-three (1,029,323) acre-feet (343,079 + 638,823 + 47,303 + 118), then the quantity of water available for delivery as CAP Indian Priority Water would be one hundred fifty-one thousand six hundred ninety-one (151,691) acre-feet plus 18.59354% of the Available CAP Supply

- (d) In time of shortage unscheduled CAP Water shall be redistributed as follows:
 - (i) Any water available for delivery as CAP Indian Priority Water that is not scheduled for delivery pursuant to contract, leases or exchange agreements for the delivery of CAP Indian Priority Water shall become available for delivery as CAP M&I Priority Water.
 - (ii) CAP M&I Priority Water shall be distributed among those entities with contracts for the delivery of CAP M&I Priority Water in a manner determined by the Secretary and the CAP Operating Agency in consultation with M&I water users to fulfill all delivery requests to the greatest extent possible. Any water available for delivery as CAP M&I Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP M&I Priority Water shall become available for delivery as CAP Indian Priority Water.

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

(f) Nothing in this paragraph 8.11 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such contracts, CAP water in amounts greater than such contractor's entitlement.

(g) Any Project water, as defined in Subarticles 5.27(b), (c) and (d) hereof, shall retain its priority relative to Project water as defined in Subarticle 5.27(a) hereof.