

**Agenda Number 6.**

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**MEETING DATE:** December 1, 2016

**AGENDA ITEM:** Update on and Delegation of Approval of Proposed System Use Agreement

**LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE**

2016 CAWCD Board of Director Strategic Plan

- Water Supply: Complete and Implement Water Wheeling Agreements

**PREVIOUS BOARD ACTION/ACTIVITY:**

February 1, 2016 - Workshop on Firming, Wheeling and Exchanges

February 4, 2016 - Development of CAP System Use Agreement and Update on Firming/Wheeling Activities

May 5, 2016 - Update on CAP System Use Agreement

August 4, 2016 - Report on and Discussion of the Status of the CAP System Use Agreement

October 6, 2016 - Update on Draft System Use Agreement

November 3, 2016 - Update on Draft System Use Agreement

November 22, 2016 - Stakeholder Discussion about Draft CAP System Use Agreement

**ISSUE SUMMARY/DESCRIPTION:**

At the November 3, 2016, Board meeting, staff announced that CAWCD and Reclamation/ Interior staff had reached agreement on the terms of a draft System Use Agreement (“SUA”) for public distribution. The draft SUA was distributed by posting on the CAP website on November 3, 2016 and a copy was provided to the Board. One week later, on November 9, Exhibits A, B and C to the SUA were distributed by posting on the CAP website, and copies of the Exhibits were provided to the Board.

On November 22, 2016, CAWCD hosted a Stakeholder Discussion about the Draft System Use Agreement. The Stakeholder Discussion was well attended. Staff provided an overview of the SUA, answered questions about the draft agreement and listened to comments. Staff also outlined the proposed process for finalizing the SUA. Staff indicated that the goal of CAWCD staff and Reclamation/Interior staff is to finalize the SUA and execute it before the end of the year, potentially at the annual Colorado

River Water Users Association Conference (“CRWUA”), which is December 14-16, 2016.

To achieve that goal, stakeholders wishing to submit written comments were asked to submit their comments by November 29, 2016. This enables staff to summarize the verbal and written stakeholder comments for the Board at the December 1 Board meeting. The Bureau of Reclamation is consulting with Arizona tribes about the SUA and has asked for written comments from the Tribes no later than December 5, 2016. Because the tribal consultation won't be complete until after the December Board meeting, approval of the SUA is not being presented for action at the regular December Board meeting.

CAWCD staff and Reclamation/Interior staff intend to work through all of the comments and prepare a final execution version of the SUA. If the parties can reach agreement on a final execution version, the United States may be prepared to execute the SUA before the end of the year. CAWCD by-laws authorize the Executive Committee to take action between Board meetings. It is possible that the Executive Committee could be convened before the end of the year to approve the SUA. Should a final document come to fruition before the next meeting of the Board, today's action would delegate authority to the Executive Committee to authorize the Board President to sign the SUA. All actions of the Executive Committee are subject to ratification by the Board. If the Executive Committee were to approve the SUA, the full Board would be asked to ratify that action at the January Board meeting.

The draft SUA and Exhibits A, B and C are attached to this brief.

**SUGGESTED MOTION:**

I move that the Board approve the delegation of authority to the Board Executive Committee to approve the System Use Agreement and authorize its execution by the Board President. The potential Action by the Executive Committee could occur between December 2 and December 31, 2016 and the Ratification of Executive Committee Action would occur at January 5 Board meeting.

Attachments.

**PRELIMINARY DRAFT -- FOR DISCUSSION PURPOSES ONLY**

**CAP SYSTEM USE AGREEMENT  
BETWEEN  
THE UNITED STATES  
AND  
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

1. **PREAMBLE:** THIS CAP SYSTEM USE AGREEMENT, hereinafter referred to as "Agreement," is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_, between the UNITED STATES OF AMERICA, acting through the Secretary of the Interior, hereinafter referred to as "Secretary," and the Central Arizona Water Conservation District, hereinafter referred to as "CAWCD," a multi-county water conservation district organized under the laws of the State of Arizona.

**WITNESSETH, THAT:**

**2. EXPLANATORY RECITALS:**

2.1 WHEREAS, Section 301(a) of the Colorado River Basin Project Act ("Basin Project Act"), Pub. L. 90-537, authorized construction of the Central Arizona Project (CAP);

2.2 WHEREAS, Section 102(a) of the Basin Project Act identified authorized purposes as "the purposes, among others, of regulating the flow of the Colorado River; controlling floods; improving navigation; providing for the storage and delivery of the waters of the Colorado River for reclamation of lands, including supplemental water supplies, and for municipal, industrial, and other beneficial purposes; improving water quality; providing for basic public outdoor recreation facilities; improving conditions for fish and wildlife, and the generation and sale of electrical power as an incident of the foregoing purposes;"

2.3 WHEREAS, Section 103 of the Arizona Water Settlements Act ("AWSA"), Pub. L. 108-451, provides that, "in accordance with the CAP repayment contract, the Central Arizona Project may be used to transport nonproject water for (1) domestic, municipal, fish and wildlife, and industrial purposes; and (2) any purpose authorized under the Colorado River Basin Project Act";

2.4 WHEREAS, Section 105 of the AWSA sets forth certain obligations of the Secretary and the State of Arizona to firm water supplies for Arizona Indian water right claims and settlements;

2.5 WHEREAS, as required by Section 105 of the AWSA and in accordance with A.R.S. §45-2423 and §45-2491, the Secretary and the State of Arizona, acting through the Arizona Water Banking Authority (“Banking Authority”), entered into the Agreement Between the Secretary of the Interior and the State of Arizona for the Firming of Central Arizona Project Indian Water, dated November 15, 2007;

2.6 WHEREAS, in accordance with Title 45, Chapter 14, Articles 1 through 5 of the Arizona Revised Statutes, the Banking Authority stores water in underground storage facilities and groundwater savings facilities to accrue Long-Term Storage Credits for the following purposes : (a) to carry out Arizona's obligations under Section 105 of the AWSA, (b) to firm CAP M&I supplies for Long-Term Contractors, (c) to firm water supplies for certain municipal and industrial users of Colorado River water in Arizona located outside the service area of CAWCD, (d) to meet interstate firming obligations under contracts entered into with the State of Nevada or others pursuant to 43 C.F.R. Part 414, and (e) to meet state commitments to firm Indian Settlement water;

2.7 WHEREAS, to date, the Banking Authority has accrued and acquired over 4 million Long-Term Storage Credits under A.R.S. Title 45, Chapter 3.1, which may be recovered in accordance with Arizona state law under permits issued by the ADWR;

2.8 WHEREAS, CAWCD is a multi-county water conservation district organized under A.R.S. §48-3701 et seq;

2.9 WHEREAS, CAWCD is the operating agency for the United States for the CAP and operates the Transferred Works of the CAP System in accordance with contracts between CAWCD and the United States, including, among others, the Master Repayment Contract and the Operating Agreement;

2.10 WHEREAS, under A.R.S. §§ 45-2457, 45-2472 and 45-2491, CAWCD is a recovery agent for the Banking Authority for the purpose of recovering Long-Term Storage Credits to: assist in carrying out Arizona's obligations under Section 105 of the AWSA; firm CAP M&I supplies for Long-Term Contractors; firm certain municipal and industrial users of Colorado River water in Arizona located outside the service area of CAWCD, and; meet interstate firming obligations;

2.11 WHEREAS, a Long-Term Contractor may utilize Non-Project Water supplies, including recovered Long-Term Storage Credits, for the purpose of firming its Long-Term Contract entitlement in the event of a Water Shortage;

2.12 WHEREAS, Reclamation and CAWCD anticipate that the Operational Capability of the CAP System will continue to be adequate to deliver Project Water, and during Water Shortage, Project Water and Firming Water, to delivery points within the Segments where Long-Term Contractors can take delivery to their service area or reservation;

2.13 WHEREAS, Long-Term Contractors may desire to schedule delivery of Project Water, and during Water Shortage, Project Water and Firming Water, either directly or through exchange, to Segments that are Upstream or Downstream of the Long-Term Contract holder's service area or reservation;

2.14 WHEREAS, the Operational Capability of the CAP System may not be sufficient during certain months and certain Segments for the delivery of Project Water, and during Water Shortage, Project Water and Firming Water, to Segments that are Downstream of the service area or reservation of Long Term Contract holders;

2.15 WHEREAS, parties may acquire Non-Project Water and desire to ensure there is sufficient Operational Capability for the delivery of that Non-Project Water;

2.16 WHEREAS, the Operational Capability of the CAP System may be optimized through modifications of the existing CAP System for the purpose of creating additional Operational Capability. Provided, such additional Operational Capability will not exceed the annual system capacity authorized in the Basin Project Act;

2.17 WHEREAS, the existence of additional Operational Capability shall be verified by Reclamation after modifications to the CAP System are completed for this purpose;

2.18 WHEREAS, Reclamation and CAWCD anticipate that from time to time entities will request the use of the CAP System to deliver Non-Project Water, whether for firming or other purposes;

2.19 WHEREAS, it is federal Reclamation policy to maximize the benefits of a federal Reclamation project such as the CAP;

2.20 WHEREAS, Articles 8.17 and 8.18 of the Master Repayment Contract support the full use of the CAP System pursuant to contracts or other arrangements for such use;

2.21 WHEREAS, Reclamation and CAWCD desire to clarify the administration of Articles 8.17 and 8.18 of the Master Repayment Contract with respect to the use of the CAP System;

2.22 WHEREAS, the Repayment Stipulation grants CAWCD exclusive authority to sell or use all Excess Water for any authorized purpose of the CAP, subject to the terms and conditions set forth in the Repayment Stipulation; and

2.23 WHEREAS, Reclamation and CAWCD desire to enter into this Agreement: (a) to adopt a standard form of CAWCD Wheeling Contract for the transportation of Non-Project Water through the CAP System, (b) to set forth scheduling priorities in the event that Operational Capability of the CAP System is constrained, (c) to facilitate the use of the CAP System to firm Long-Term Contracts during a Water Shortage, (d) to facilitate the use of the CAP System to firm certain municipal and industrial users of Colorado River water in Arizona located outside the service area of CAWCD, (e) to facilitate the use of the CAP System to meet interstate obligations under contracts entered into with the State of Nevada or others pursuant to 43 C.F.R. Part 414, and (f) to set forth standard terms and conditions for a Reclamation Wheeling Contract.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the United States and CAWCD agree as follows:

3. **DEFINITIONS:**

3.1 "Agricultural Settlement Pool Contracts" means Excess Water Contracts entered into pursuant the Supplemental Policy for Marketing of Excess Water for Non-Indian Agricultural Use – 2004 through 2030, as supplemented.

- 3.2 “Annual Operating Plan” means the final Water Delivery Schedules prepared annually by CAWCD, confirming the volumes of Project Water and Non-Project Water to be delivered during the following Year.
- 3.3 “CAP System” means: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).
- 3.4 "Operational Capability" means the ability of the CAP System to deliver water given the system’s physical and operational characteristics.
- 3.5 "CAP Terminus" means the terminus of the CAP System as depicted on the map attached hereto as Exhibit A.
- 3.6 “CAWCD” means the Central Arizona Water Conservation District, a multi-county water conservation district organized under the laws of Arizona, or any successor operating agency for the CAP.
- 3.7 “CAWCD Wheeling Contract” means an executed contract substantially in the form of the standard form of CAWCD Wheeling Contract attached hereto as Exhibit B or such other CAWCD wheeling contract as may be approved by Reclamation.
- 3.8 "Central Arizona Groundwater Replenishment District" means the replenishment authorities granted to CAWCD in Title 48, Chapter 22, Article 4 of Arizona Revised Statutes, which are exercised as a function of the CAWCD.
- 3.9 "Downstream" means the direction along the CAP System towards the CAP Terminus.
- 3.10 "Excess Water" means that water defined as Excess Water in the Repayment Stipulation.
- 3.11 "Excess Water Contract" means an agreement between CAWCD and a water user for the delivery of Excess Water.
- 3.12 “Exchange Agreement” means an agreement between a Long-Term Contractor and a separate party holding Non-Project Water in which Project Water available for delivery to the Long-Term Contractor is exchanged for Non-Project Water.

- 3.13 “Exchange Implementation Agreement” means an agreement among a non-Federal Long-Term Contractor, a separate party holding Non-Project Water and CAWCD, setting forth the terms and conditions under which CAWCD will deliver Exchange Water pursuant to an Exchange Agreement.”
- 3.14 “Exchange Water” means Project Water exchanged for Non-Project Water pursuant to an Exchange Agreement.
- 3.15 “Federal Arrangement” means an arrangement relating to use of the CAP System entered into by the United States under Article 8.17 of the Master Repayment Contract.
- 3.16 “Firming Agreement” means an agreement between the United States or CAWCD and holders of Long-Term contracts or lessees of tribal Project Water to set forth the terms and conditions under which CAWCD will deliver, and the holder of the Long-Term Contract or lessee of tribal Project Water will accept, Firming water.
- 3.17 "Firming" means satisfying all or a portion of a Long-Term Contract entitlement that has been reduced due to a Water Shortage.
- 3.18 "Firming Water" means water available for Firming a Long-Term Contract, as identified in Section 8 of this Agreement.
- 3.19 “Fixed OM&R Charge(s)” has the same meaning as under the Repayment Stipulation.
- 3.20 "Interstate Agreements" means contracts entered into in accordance with the Final Rule for Offstream Storage of Colorado River Water and Development and Release of Intentionally Created Unused Apportionment in the Lower Division States, 43 C.F.R. Part 414.
- 3.21 "Long-Term Contract" means a long-term contract or subcontract for delivery of a Project Water entitlement as defined in footnote 1 to Section 4(a) of the Repayment Stipulation. Excess Water Contracts are not Long-Term Contracts.
- 3.22 "Long-Term Contractor" means an entity holding a Long-Term Contract.
- 3.23 "Long-Term Storage Credit" means a Long-Term Storage Credit, as defined in A.R.S. §45-801.02(11).



- 3.24 "Master Repayment Contract" means the Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, Contract No. 14-06-W-245, Amendment No. 1, as it may be amended and supplemented.
- 3.25 "Non-Project Water" means all water, including Recovered Water, other than Project Water. For the purposes of this Agreement the term Non-Project Water does not include Long-Term Storage Credits.
- 3.26 "Notice of Completion" means the Notice of Completion to be issued by Reclamation at the conclusion of construction of a System Improvement Project.
- 3.27 "On-River Firming" means agreements entered into with certain municipal and industrial users of Colorado River water in Arizona located outside the service area of CAWCD, subject to the approval of the United States, to provide firming for such water users pursuant to A.R.S. § 45-2457.
- 3.28 "Operating Agreement" means the Operating Agreement between the United States of America and the Central Arizona Water Conservation District for Operation and Maintenance of the Central Arizona Project, dated June 15, 2000.
- 3.29 "Project Water" means that water defined as Project Water in the Repayment Stipulation.
- 3.30 "Projected Additional Operational Capability" means Reclamation's projection of the additional Operational Capability that is expected to result from a proposed System Improvement Project.
- 3.31 "Project Power" means the United States' entitlement to capacity and energy from the Navajo Generating Station and the Transmission System, or any replacement thereof, as authorized by Section 303 of the Basin Project Act and as described in contracts entered into pursuant to that Act.
- 3.32 "Pumping Energy Charge(s)" has the same meaning as under the Repayment Stipulation.
- 3.33 "Reclamation" means the United States Bureau of Reclamation.
- 3.34 "Reclamation Wheeling Contract" means a contract between Reclamation and a separate party to deliver Non-Project Water using the CAP System.

- 3.35 "Recovered Water" means the water resulting from the recovery of Long-Term Storage Credits from wells pursuant to a valid recovery well permit issued by the Arizona Department of Water Resources under A.R.S. §45-834.01.
- 3.36 "Repayment Stipulation" means the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al.*, and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.
- 3.37 "Secretary" means the Secretary of the Interior or her duly authorized representative.
- 3.38 "Segment" means a section of the CAP System between pumping plants, as depicted on the map attached hereto as Exhibit A.
- 3.39 "System Improvement Project" means a material modification of the Transferred Works that creates Verified Additional Operational Capability in accordance with Section 13 of this Agreement.
- 3.40 "Transferred Works" means Transferred Works as defined in the Operating Agreement or as may be transferred under subsequent transfer notices.
- 3.41 "Upstream" means the direction along the CAP System towards Lake Havasu.
- 3.42 "Verified Additional Operational Capability" means the additional Operational Capability attributable to a completed System Improvement Project, measured in acre-feet per annum, as determined by Reclamation in accordance with Section 13 of this Agreement.
- 3.43 "Water Delivery Schedules" means schedules submitted to CAWCD pursuant to the terms of Long-Term Contracts, including leases and exchanges, Excess Water Contracts, CAWCD Wheeling Contracts, Firming Agreements, Reclamation Wheeling Contracts, or Federal Arrangements.
- 3.44 "Water Shortage", for the purposes of this document, means either that the Project Water supply is insufficient to satisfy all Long-Term Contract orders, or that an unplanned CAP System outage has occurred disrupting the delivery of Long-Term Contract orders.
- 3.45 "Year" means a calendar year.

4. **TERM OF AGREEMENT:** This Agreement shall commence on the date of execution by Reclamation and CAWCD and shall have the same term as the Master Repayment Contract.
  
5. **USE OF CAP SYSTEM:**
  - 5.1 CAWCD is authorized to use the CAP System for the following purposes, subject to the Scheduling Priorities for CAP System Use set forth in Section 11;
    - 5.1.1 Delivery of Project Water;
    - 5.1.2 Delivery of Exchange Water;
    - 5.1.3 Delivery of Non-Project Water, including Recovered Water, for the following purposes:
      - 5.1.3.1 Firming of CAP Long-Term Contracts,
      - 5.1.3.2 On-River Firming, and
      - 5.1.3.3 Satisfaction of Interstate Agreements.
  - 5.2 For purposes other than those in Subsection 5.1.1, 5.1.2, and 5.1.3, use of the CAP System to deliver water shall require a Reclamation Wheeling Contract, Federal Arrangement, or a CAWCD Wheeling Contract. All uses of the CAP System shall be subject to the Scheduling Priorities for CAP System Use set forth in Section 11 of this Agreement.
  
6. **STANDARD FORM OF CAWCD WHEELING CONTRACT:** In satisfaction of Article 8.18 of the Master Repayment Contract, the parties approve the standard form of CAWCD Wheeling Contract attached hereto as Exhibit B. CAWCD may enter into the standard form of CAWCD Wheeling Contract with any federal, state, local, tribal or private entity desiring to enter such an agreement. Approval of the form of CAWCD Wheeling Contract under this Agreement does not constitute approval of any specific agreement by the Secretary under Article 8.18 of the Master Repayment Contract. Any specific CAWCD Wheeling Contract must be approved by the Secretary in accordance with Article 8.18 of the Master Repayment Contract.
  
7. **RECLAMATION WHEELING:**

- 7.1 As the Operating Agency for the CAP, CAWCD will perform the delivery obligations of the United States to transport Non-Project Water under Reclamation Wheeling Contracts and Federal Arrangements, so long as such obligations are not inconsistent with (a) existing Long-Term Contracts, to which CAWCD is not a party, (b) the Repayment Stipulation, (c) the Master Repayment Contract, (d) the Operating Agreement, (e) priorities of Project Water; and/or (f) this Agreement. Reclamation will coordinate and consult with CAWCD prior to entering into any Reclamation Wheeling Contract or Federal Arrangements.
- 7.2 Reclamation will incorporate the terms and conditions of Exhibit C into all Reclamation Wheeling Contracts.
- 7.3 Reclamation will describe the terms of any Federal Arrangements in writing and provide a copy of such writing to CAWCD. At a minimum, the terms of any Federal Arrangements will incorporate provisions substantially similar to those in Exhibit C.

**8. FIRMING WATER:**

- 8.1 Sources of Firming Water may include, but are not limited to:
  - 8.1.1 Non-Project Water delivered through the CAP System, including Recovered Water introduced into the CAP System; and
  - 8.1.2 Exchange Water
- 8.2 Subject to the requirements of the amended Navajo Power marketing Plan published in the Federal Register on September 24, 2007, or any amendments thereto, Project Power at Project Power rates may be used to develop or deliver Firming Water.
- 8.3 CAWCD shall require Non-Federal Long-Term Contractors to enter into Firming Agreements for any Firming that involves the use of the CAP System to set forth the terms and conditions under which CAWCD will deliver, and the holder of the Long-Term Contract will accept Firming Water.
- 8.4 For any Firming of a Federal Long-Term Contract that involves the use of the CAP System, Reclamation will enter into an agreement with the Federal Long-Term Contractor to specify the terms and conditions under which Firming Water will be delivered to such Federal Long-Term Contractor. At a minimum, the terms of any such

agreement will incorporate provisions substantially similar to those in Exhibit C. If the agreement is not in writing, Reclamation will describe the terms of the agreement in writing and provide a copy of such writing to CAWCD.

8.5 As the Operating Agency for the CAP, CAWCD will perform the delivery obligations of the United States to deliver Firming Water, so long as such obligations are not inconsistent with (a) existing Long-Term Contracts, to which CAWCD is not a party, (b) the Repayment Stipulation, (c) the Master Repayment Contract, (d) the Operating Agreement, (e) priorities of Project Water; and/or (f) this Agreement. Reclamation will coordinate and consult with CAWCD prior to entering into any agreement for the delivery of Firming Water.

8.6 Firming Water shall not be subject to redistribution, nor made available for delivery, under the shortage sharing provisions of Long-Term Contracts.

9. **EXCHANGE AGREEMENTS ENTERED INTO BY LONG-TERM CONTRACTORS:**

9.1 Exchanges between Long-Term Contractors and CAWCD:

9.1.1 Exchanges of Project Water for Non-Project Water, including exchanges of Recovered Water for Firming purposes, between Long-Term Contractors and CAWCD shall be:

9.1.1.1 in accordance with the terms of Long-Term Contracts and this Agreement;

9.1.1.2 pursuant to an Exchange Agreement between the Long-Term Contractor and CAWCD, approved by Reclamation;

9.1.2 Notwithstanding Subsection 3.24, a Long-Term Contract held by CAWCD for the benefit of the Central Arizona Groundwater Replenishment District may be used to exchange Project Water for Long-Term Storage Credits, provided that those credits are transferred into a conservation district account established under A.R.S. §45-859.01 in satisfaction of a replenishment obligation, and such an exchange shall be:

9.1.2.1 in accordance with the terms of Long-Term Contracts and this Agreement;  
and

9.1.2.2 approved by Reclamation.

9.2 Exchanges between Non-Federal Long-Term Contractors and parties holding Non-Project Water supplies:

9.2.1 Other than exchanges with CAWCD under Subsection 9.1, exchanges of Project Water for Non-Project Water between Non-Federal Long-Term Contractors and separate parties holding Non-Project Water supplies shall be:

9.2.1.1 in accordance with the terms of Long-Term Contracts and this Agreement;  
and

9.2.1.2 pursuant to an Exchange Agreement between the Non-Federal Long-Term Contractor the party holding the Non-Project Water supply, which is approved by CAWCD and Reclamation; and

9.2.1.3 pursuant to an Exchange Implementation Agreement among the Non-Federal Long-Term Contractor, the party holding the Non-Project Water supply and CAWCD.

9.3 Exchanges between Federal Long-Term Contractors and parties holding Non-Project Water supplies:

9.3.1 Other than exchanges with CAWCD under Subsection 9.1, exchanges of Project Water for Non-Project Water between Federal Long-Term Contractors and separate parties holding the Non-Project Water supplies shall be:

9.3.1.1 in accordance with the terms of the Federal Long-Term Contract and this Agreement, and

9.3.1.2 pursuant to an Exchange Agreement between the Federal Long-Term Contractor and the party holding the Non-Project Water supply, which is approved by Reclamation.

9.3.2 Reclamation shall ensure that the recipient of Exchange Water from the CAP System agrees to take delivery of such water in accordance with the terms of the Federal

Long-Term Contract under which the exchange of Project Water is being implemented. Reclamation will describe the terms of any such delivery agreement in writing and provide a copy of such writing to CAWCD.

- 9.3.3 As the Operating Agency for the CAP, CAWCD will perform the delivery obligations of the United States to deliver water pursuant to exchanges of Project Water for Non-Project Water by Federal Long-Term Contractors, so long as such obligations are not inconsistent with (a) existing Long-Term Contracts, to which CAWCD is not a party, (b) the Repayment Stipulation, (c) the Master Repayment Contract, (d) the Operating Agreement, (e) priorities of Project Water; and/or (f) this Agreement. Reclamation will coordinate and consult with CAWCD prior to approving any exchange of Project Water for Non-Project Water by a Federal Long-Term Contractor.

10. **ANNUAL OPERATING PLAN FOR CAP SYSTEM USE:**

- 10.1 Each year, after receipt of Water Delivery Schedules, CAWCD shall develop an Annual Operating Plan confirming the monthly Water Delivery Schedules for the subsequent Year.
- 10.1.1 The Annual Operating Plan shall, to the extent reasonable, make maximum use of the CAP System, subject to the provisions of Subsection 10.1.2 of this Agreement, and shall be made available for Secretarial review. In the development of the Annual Operating Plan, CAWCD shall:
- 10.1.2 Take into account the Operational Capability, by month and Segment, following established technical procedures that address such factors as physical and operational constraints, projected Project and Non-Project Water supplies, system losses, projected location and timing of deliveries including constraints caused by deliveries scheduled for delivery Downstream of a Long-Term Contractors' reservations or service areas, scheduled maintenance activities, energy programs, Lake Pleasant operations, underground storage facility capacity, daily peak flows, and the reasonable reservation of Operational Capability, not to exceed 50,000 acre-feet, for operational efficiency.
- 10.1.3 Apply an annual uniform loss assessment of 5% to the volume of any Non-Project Water delivered by the CAP System, provided, however, Firming Water shall bear no loss assessment.

- 10.1.4 In accordance with the terms of Long-Term Contracts, including leases and exchanges, Excess Water Contracts, Reclamation Wheeling Contracts, other Federal Arrangements, and CAWCD Wheeling Contracts, make only such adjustments to the Water Delivery Schedules as are necessary to accommodate the physical and operational constraints identified in 10.1.2 and in accordance with the Scheduling Priorities for CAP System Use set forth in Section 11 of this Agreement.
- 10.1.5 By December 15 of each year prior, provide a copy of the Annual Operating Plan to Reclamation.

**11. SCHEDULING PRIORITIES FOR CAP SYSTEM USE:**

- 11.1 If, in preparation of the Annual Operating Plan in Section 10 of this Agreement, CAWCD determines that there is insufficient Operational Capability to satisfy Water Delivery Schedules in specific Segments, in specific months, and if, after affected parties have been consulted and provided opportunities to amend their Water Delivery Schedules, Water Delivery Schedule modifications are required, CAWCD shall utilize the following priorities for scheduling Operational Capability in those Segments and months.
  - 11.1.1 First, Water Delivery Schedules pursuant to Long-Term Contracts for: (a) delivery, directly or by exchange, for use within the Long-Term Contractor's reservation or service area, and/or (b) for leases, exchanges and underground storage delivered within the same Segment as the Long-Term Contractor's service area or reservation, or within a Segment located Upstream of the Long-Term Contractor's service area or reservation.
  - 11.1.2 Second, through 2030, Water Delivery Schedules pursuant to Agricultural Settlement Pool Contracts.
  - 11.1.3 Third, Water Delivery Schedules pursuant to CAWCD Wheeling Contracts that are associated with Verified Additional Operational Capability.
  - 11.1.4 Fourth, Water Delivery Schedules pursuant to Long-Term Contracts for leases, exchanges and underground storage delivered within a Segment located Downstream of the Long-Term Contractor's service area or reservation.
  - 11.1.5 Fifth, Water Delivery Schedules pursuant to Excess Water Contracts, other than Agricultural Settlement Pool Contracts.



- 11.1.6 Sixth, Water Delivery Schedules for Non-Project Water, other than Firming Water, pursuant to Reclamation Wheeling Contracts or Federal Arrangements for Indian and federal agency purposes.
- 11.1.7 Seventh, Water Delivery Schedules for Non-Project Water, other than Firming Water, pursuant to Reclamation Wheeling Contracts or Federal Arrangements for purposes other than Indian and federal agency purposes.
- 11.1.8 Eighth, Water Delivery Schedules pursuant to CAWCD Wheeling Contracts that are associated with Projected Additional Operational Capability.
- 11.2 During Water Shortage, Firming Water shall carry the scheduling priority of the Project Water it replaces.
- 11.3 Any further reductions to Water Delivery Schedules that are necessary within the priorities as described in Subsection 11.1 shall be based on any applicable provisions specified in water delivery contracts, and if further necessary, on a *pro-rata* basis.
- 11.4 This Section is not intended, and shall not be construed to, to contravene the provisions of any Long-Term Contract, or lease pursuant to a Long-Term Contract.

12. **WATER QUALITY:**

- 12.1 Reclamation and CAWCD shall establish uniform water quality standards for any Non-Project Water introduced into the CAP System.
- 12.2 The party introducing the Non-Project Water, including CAWCD or Reclamation, shall be responsible for compliance with the standards of 12.1.
- 12.3 The party introducing the Non-Project Water shall indemnify the United States and CAWCD against all losses to third parties resulting from commingling of said Non-Project Water with Project Water and/or other Non-Project Water in the CAP System.

13. **CAP SYSTEM IMPROVEMENT PROJECTS:**

- 13.1 System Improvement Projects shall be modifications of the Transferred Works of the CAP System, which increase the Operational Capability of the CAP System.
- 13.2 Prior to commencing any System Improvement Project, CAWCD shall submit a proposal for the System Improvement Project to Reclamation, together with CAWCD's estimate of the associated increase in Operational Capability if the System Improvement

Project were to be completed, a technical justification for the CAWCD estimate, and the results of such additional analysis as Reclamation determines to be appropriate.

- 13.3 Reclamation within 60 days of receiving the information specified under Subsection 13.2, shall evaluate the proposed System Improvement Project and determine if the proposed System Improvement Project qualifies as a Substantial Change under Article 12 of the Operating Agreement.
- 13.4 If under Subsection 13.3 Reclamation determines the proposed System Improvement Project qualifies as a Substantial Change under Article 12 of the Operating Agreement, Reclamation, in consultation with CAWCD and within 180 days of receiving the information specified under Subsection 13.2, shall evaluate the proposed System Improvement Project and make a determination of Projected Additional Operational Capability, which shall be quantified in acre-feet per annum.
- 13.5 Upon Reclamation's determination of Projected Additional Operational Capability under Subsection 13.4, CAWCD may deliver Non-Project Water pursuant to CAWCD Wheeling Contracts, approved by Reclamation, up to the amount of the Projected Additional Operational Capability, and subject to eighth priority as defined in the Scheduling Priorities for CAP System Use in Section 11.
- 13.6 Reclamation shall perform all necessary environmental compliance for the proposed System Improvement Project. The time required will be dependent on the scope of the proposed System Improvement Project.
- 13.7 If Reclamation approves the proposed System Improvement Project, CAWCD may proceed with the proposed System Improvement Project, after completion of Subsection 13.6.
- 13.8 Upon completion of a System Improvement Project that received a determination of Projected Additional Operational Capability under Subsection 13.4, CAWCD shall provide Reclamation with written notice that the System Improvement Project has been completed and the extent to which, if any, CAWCD estimates that the actual additional Operational Capability resulting from the System Improvement Project is the same, greater, or lesser than the Projected Additional Operational Capability, a technical justification for the CAWCD estimate, and the results of such additional analysis as Reclamation determines to be appropriate.

- 13.8.1 Reclamation, in consultation with CAWCD, shall evaluate the completion of the System Improvement Project in accordance with the terms of the Operating Agreement and shall issue a Notice of Completion.
- 13.9 Within 180 days of issuance of a Notice of Completion under Subsection 13.8.1, Reclamation, in consultation with CAWCD, shall:
  - 13.9.1 evaluate CAWCD's estimate of the actual associated increase in Operational Capability and the CAWCD technical justification; and
  - 13.9.2 make a determination of Verified Additional Operational Capability.
- 13.10 Upon Reclamation's determination of Verified Additional Operational Capability under Subsection 13.9, CAWCD may deliver Non-Project Water pursuant to CAWCD Wheeling Contracts, approved by Reclamation, up to the amount of the Verified Additional Operational Capability, and subject to third priority as defined in the Scheduling Priorities for CAP System Use in Section 11.
- 13.11 Title to any modifications of the Transferred Works resulting from a System Improvement Project shall remain with the United States.

#### **14. FEES, CHARGES, AND REVENUES**

- 14.1 Long-Term Contractors exchanging Project Water for Non-Project Water pursuant to Section 9 shall pay the Fixed OM&R and Pumping Energy Charge established annually by CAWCD, and applicable capital charges.
- 14.2 Parties taking delivery of Non-Project Water pursuant to CAWCD Wheeling Contracts, Reclamation Wheeling Contracts or Federal Arrangements shall pay the same Fixed OM&R and Pumping Energy Charge established annually by CAWCD for Project Water.
- 14.3 Capital charges shall be applied to Non-Project Water as set forth in CAWCD Wheeling Contracts, Reclamation Wheeling Contracts or Federal Arrangements.
- 14.4 Firming Agreements authorized under Subsection 8.3 and 8.4 may contain provisions for CAWCD to collect charges based on CAWCD estimates of CAWCD's actual

expenses to be incurred in the development and delivery of Firming Water and the revenues collected from such charges shall be available for use by CAWCD solely for such purposes.

14.5 Fixed OM&R Charges shall not be used to pay the costs to complete a System Improvement Project.

15. **NO CONFLICT; NO DELEGATION OF AUTHORITY:** Nothing in this Agreement, or any Annual Operating Plan, is intended to contravene or diminish the Secretary's or CAWCD's rights and obligations under the provisions of the Master Repayment Contract, the Stipulation, any Long-Term Contract or federal law. In the case of a conflict between this Agreement and existing agreements between Reclamation and CAWCD (e.g., the Master Repayment Contract, Repayment Stipulation, and the Operating Agreement), those existing agreements will prevail. Nothing in this Agreement shall be construed as a delegation of authority to perform or interpret inherently Federal functions.

**16. GENERAL PROVISIONS<sup>1</sup>**

16.1 **INDEMNIFICATION:** [CAWCD and the United States are developing language as to possible indemnification between CAWCD and the United States].

16.2 **NOTICES:** Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of CAWCD, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, 500 Date Street, Boulder City, NV 89005, and the Phoenix Area Office Area Manager, 6150 West Thunderbird Road, Glendale AZ 85306-4001, and on behalf of the United States, when mailed, postage prepaid, or delivered to the General Manager of the Central Arizona Water Conservation District, 23636 North 7<sup>th</sup> Street, Phoenix, AZ 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

16.3 **CONTINGENT ON APPROPRIATIONS OR ALLOTMENT OF FUNDS:** The expenditure or advance of any money or the performance of any obligation of the United

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<sup>1</sup> These provisions are still under review and consideration by CAWCD and the United States and subject to revision.

States under this Agreement shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve CAWCD from any obligations under this Agreement. No liability shall accrue to the United States in case funds are not appropriated or allotted.

16.4 OFFICIALS NOT TO BENEFIT: No Member of or Delegate to the Congress, Resident Commissioner, or official of CAWCD shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

16.5 CHANGES IN CAWCD'S ORGANIZATION: While this Agreement is in effect, no change may be made in CAWCD's organization, by exclusion of lands, by dissolution, consolidation, merger or otherwise which may affect the respective rights, obligations, privileges, and duties of either the United States or CAWCD under this Agreement, except upon the Secretary's written consent.

16.6 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED: The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any right or interest therein by either party shall be valid until approved in writing by the other party.

16.7 BOOKS, RECORDS, AND REPORTS: CAWCD shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including CAWCD's financial transactions; water supply data; project operation, maintenance and replacement logs; project land and rights-of-way use agreements; and other matters that the Secretary may require. Reports thereon shall be furnished to the Secretary in such form and on such date or dates as the Secretary may require. Subject to applicable Federal laws and regulations, each party to this Agreement shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Agreement.

16.8 RULES, REGULATIONS, AND DETERMINATIONS:

16.8.1 The parties agree that the delivery of water or the use of Federal facilities pursuant to this Agreement is subject to Federal reclamation law, as amended

and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

16.8.2 The Secretary shall have the right to make determinations necessary to administer this Agreement that are consistent with its expressed and implied provisions, the laws of the United States and the State of Arizona, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with CAWCD.

16.9 EXHIBITS MADE PART OF AGREEMENT: The Exhibits to this Agreement may change during the term of this Agreement. The initial Exhibits are attached hereto and made a part hereof, and each shall be in force and effect in accordance with its respective provisions until superseded by a subsequent exhibit executed by the parties.

16.10 CONTRACT DRAFTING CONSIDERATIONS: This Agreement has been, negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Agreement pertains. Articles 1 through 16 of this Agreement have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles.

IN WITNESS WHEREOF, the Parties have executed this CAP System Use Agreement the day and year first above written.

**THE UNITED STATES OF AMERICA**

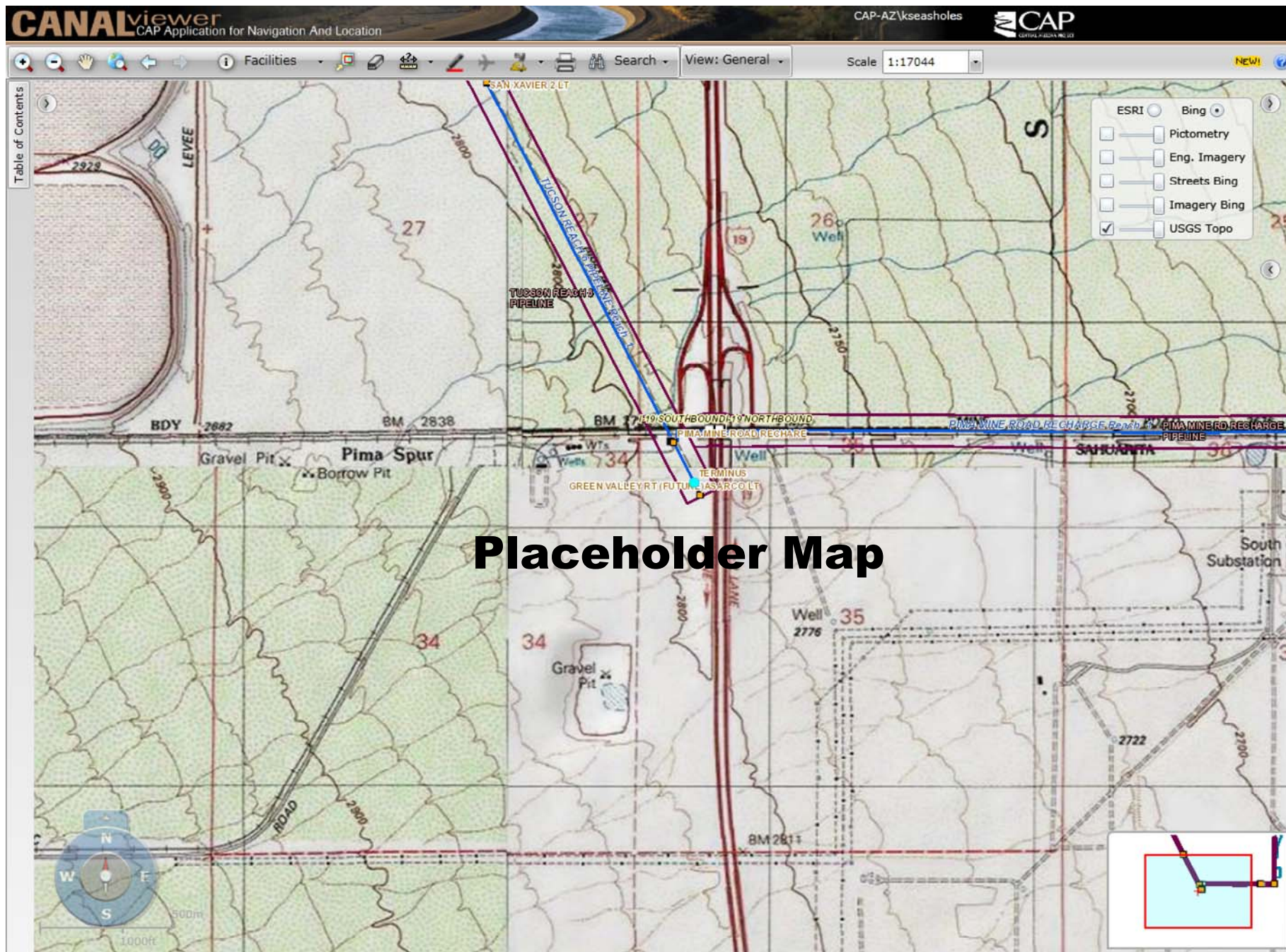
By: \_\_\_\_\_  
Regional Director  
Lower Colorado Region  
Bureau of Reclamation

**CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT**

Approved as to Form:

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
President





**EXHIBIT B**

**DRAFT 11/9/16**

**Standard Form of CAWCD Wheeling Contract**

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**WHEELING CONTRACT**

**BETWEEN**

**THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT AND**

**[ENTITY]**

This CAWCD Wheeling Contract ("Contract") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the Central Arizona Water Conservation District ("CAWCD"), a political subdivision of the State of Arizona, and [Entity] (Insert short-form reference, if desired, i.e. "City").

**RECITALS**

A. WHEREAS, the United States and CAWCD have entered into the CAP System Use Agreement between the United States and the Central Arizona Water Conservation District ("CAP System Use Agreement"), dated [ ];

B. WHEREAS, the CAP System Use Agreement authorizes CAWCD to transport Non-Project Water through the CAP System under a CAWCD Wheeling Contract between CAWCD and other parties, subject to the approval of the United States;

C. WHEREAS, in Section 6 of the CAP System Use Agreement, the United States approved a standard form of CAWCD Wheeling Contract.

D. WHEREAS, the [Entity] desires to wheel Non-Project Water through the CAP System; and

D. WHEREAS, CAWCD and the [Entity] desire to enter into this Contract to set forth the terms and conditions under which CAWCD will transport Non-Project Water through the CAP System for the use or benefit of the [Entity].

**1. AGREEMENT:**

In consideration of the mutual covenants and agreements set forth below, and intending to be legally bound, CAWCD and the [Entity] hereby agree as follows:

**2. DEFINITIONS:**

Definitions included in the Master Repayment Contract, the Repayment Stipulation, and the CAP System Use Agreement are applicable to this Contract. The first letters of terms so defined are capitalized herein. In addition, the following terms, when capitalized, have the meanings indicated:

2.1 Capital Equivalency Charge: An amount equal to the M&I water service capital charge, as published in CAWCD's annual rate schedule for a particular Year, multiplied by the maximum number of acre-feet per year of Wheeled Water that may be transported through the CAP System under this Contract, as shown in Exhibit 2.6 hereto, regardless of the amount to be transported in any given Year.

2.2 Place of Use: The service area or place of use depicted on the map in Exhibit 2.2 hereto.

2.3 Point(s) of Receipt: The location(s) designated in Exhibit 2.3, hereto, where Wheeled Water will enter the CAP System.

2.4 Point(s) of Delivery: The location(s) designated in Exhibit 2.4, hereto, where Wheeled Water is diverted from the CAP System for delivery to or on behalf of the [Entity].

2.5 System Improvement Projects: The project(s) described in Exhibit 2.5 hereto to modify the Transferred Works to create Verified Additional Operational Capability in accordance with the System Use Agreement.

2.6 Wheeled Water: The Non-Project water, of the type or source available to the [Entity] under a contract, decree, or statute, all as specified in Exhibit 2.6 to this Contract, to be transported through the CAP System pursuant to this Contract.

**3. TERM:**

This Contract shall become effective on the date first written above and shall remain in effect until the termination of [the Entity's] contract or other right to Wheeled Water specified in Subsection 2.6 of this Contract, unless otherwise terminated in accordance with the provisions of this Contract.

**4. TRANSPORTATION OF WHEELED WATER BY CAWCD:**

CAWCD shall transport Wheeled Water from the Point(s) of Receipt to the Point(s) of Delivery in accordance with the terms of this Contract, subject to the scheduling priorities for use of CAP System in Section 11 of the CAP System Use Agreement.

**5. AVAILABILITY OF VERIFIED ADDITIONAL OPERATIONAL CAPABILITY:**

5.1 Pursuant to the CAP System Use Agreement, Reclamation has made a determination of Projected Additional Operational Capability. This determination is attached hereto as Exhibit 5.1.

5.2 After, in accordance with the terms of the CAP System Use Agreement, Reclamation issues a final determination of Verified Additional Operational Capability, CAWCD will provide a copy of such final determination to the [Entity]. The final determination of Verified Additional Operational Capability will be attached to this Contract as Exhibit 5.2 hereto and will supersede the determination of Projected Additional Operational Capability, and Exhibit 5.1, for purposes of implementation of this Contract.

5.3 Reclamation's determination of Verified Additional Operational Capability may be greater, lesser, or equal to Reclamation's determination of Project Additional Operational Capability. If Reclamation's determination of Verified Additional Operational Capability is greater or lesser than its determination of Projected Additional Operational Capability, CAWCD and [Entity] agree to amend Exhibit 2.6 to be consistent with Reclamation's determination of Verified Additional Operational Capability. If the total volume of water to be transported under issued CAWCD Wheeling Contracts exceeds the Verified Additional Operational Capability of the associated System Improvement Project, the volume of water to be transported under such CAWCD Wheeling Contracts will be reduced on a pro rata basis.

*[In the event that this Contract is being entered into after Reclamation has made a determination of Verified Additional Operational Capability, then 5.1, 5.2 and 5.3 will be replaced with the following: "5.1 Pursuant to the CAP System Use Agreement, Reclamation has made a determination of Verified Additional Operational Capability. This determination is attached hereto as Exhibit 5.1."]*

**6. ENVIRONMENTAL CLEARANCE:**

Wheeled Water shall only be transported for the [Entity] in a manner consistent with the final environmental clearances from the United States as indicated in Exhibit 6 hereto. Notwithstanding any

other provision of this Contract, Wheeled Water shall not be delivered to the [Entity] unless and until the [Entity] has obtained final environmental clearance from the United States for the transportation of Wheeled Water through the CAP System and for the system or systems through which Wheeled Water is to be conveyed to the Point(s) of Receipt, and the system or systems through which Wheeled Water is to be conveyed from the Point(s) of Delivery to the Place of Use. Such system(s) shall include all pipelines, canals, distribution systems, treatment, storage, and other facilities through or in which Wheeled Water is conveyed.

**7. POINT(S) OF DELIVERY, POINT(S) OF RECEIPT, MEASUREMENT AND RESPONSIBILITY:**

7.1 CAWCD shall transport Wheeled Water from the Point(s) of Receipt to the Point(s) of Delivery for delivery to or for the benefit of the Contractor.

7.2 The [Entity] shall secure from CAWCD all necessary land use permits, as provided under Section 7.2.8 of the Operating Agreement, for facilities to be located within the CAP System right-of-way for the purpose of conveying Wheeled Water to the CAP System Point(s) of Receipt and from the Point(s) of Delivery to the Place of Use. Unless CAWCD and the [Entity] agree in writing to the contrary, the [Entity] shall construct and install, at its sole cost and expense: (i) all facilities required to transport Wheeled Water to the Point(s) of Receipt; and (ii) all facilities required to transport Wheeled Water from the Point(s) of Delivery to the Place of Use. The [Entity] shall furnish to CAWCD, drawings and specifications showing all such facilities to be constructed or installed within the CAP System right-of-way, and shall obtain CAWCD's written approval before commencing construction or installation of such facilities. All facilities constructed, installed, operated or maintained on the CAP System right-of-way by or for the [Entity] shall be subject to such further agreements and to such restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by CAWCD.

7.3 Upon termination of this Contract and written notice from CAWCD, the [Entity] shall promptly remove, at its sole cost and expense, all facilities constructed or installed on the CAP System right-of-way under this Contract and restore said right-of-way and all Project facilities affected to their condition immediately prior to the construction or installation of such connection facilities. If the [Entity] fails to remove said facilities and restore said right-of-way and Project facilities within thirty (30) days after receiving any written notice from CAWCD to do so, CAWCD may remove said facilities and restore said right-of-way and Project facilities at the [Entity]'s cost and expense. Within thirty (30) days after receiving written demand from CAWCD to do so, the [Entity] shall pay CAWCD, as specified in such

written demand, for all costs and expenses incurred by CAWCD in removing said facilities and restoring said right-of-way and Project facilities.

7.4 When making or considering modifications to the transferred works, CAWCD shall comply with the terms of Article 12 of the Operating Agreement. If modification of the CAP System is required to allow for the interconnection between the CAP System and the [Entity]'s facilities constructed on the CAP System right-of-way, including construction of one or more additional CAP turnouts, CAWCD shall make such interconnection modifications at the sole expense of the Entity which shall advance fund CAWCD's costs.

7.5 All Wheeled Water shall be measured with equipment that complies with CAWCD and United States standards and shall be operated and maintained by CAWCD. Upon request of the Entity, the accuracy of such measurements shall be investigated by CAWCD and the Entity, and any errors which are mutually determined to have occurred shall be adjusted; Provided, however, if CAWCD and the [Entity] cannot agree on the required adjustment, CAWCD's determination shall be conclusive, subject to review and revision by the Secretary.

7.6 If the [Entity] intends to transport Wheeled Water through facilities on the CAP System right-of-way that are owned or operated by entities other than the United States or CAWCD, the use by the [Entity] of such facilities shall be the subject of written agreement(s) between the [Entity] and the owner(s) or operator(s) of such facilities.

7.7 Neither the United States nor CAWCD shall be responsible for the control, carriage, handling, use, disposal, or distribution of water up to the Point(s) of Receipt or beyond the Point(s) of Delivery. Except for such claims, costs or damages arising from acts of negligence and committed by the United States or its employees, agents, or contractors for which the United States is found liable under the Federal Tort Claims Act, the [Entity] shall indemnify and hold the United States and CAWCD harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of water up to the Point(s) of Receipt or beyond the Point(s) of Delivery.

**8. PLACE OF USE:**

Wheeled Water shall be used within the Place of Use.

**9. INTERRUPTIONS AND REDUCTIONS:**

CAWCD may discontinue or reduce the quantity of Wheeled Water to be transported as herein provided for the purposes of investigation, inspection, construction, testing, maintenance, repair, or replacement of any of the Project facilities or any part thereof. CAWCD shall attempt to coordinate any such discontinuance or reduction with the [Entity] and give the [Entity] due notice in advance of such discontinuance or reduction. In case of emergency, no notice need be given. The United States, its officers, agents, and employees, and CAWCD, its officers, agents, and employees, shall not be liable for damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in transportation of Wheeled Water occurs. If any such discontinuance or temporary reduction results in transportation for the [Entity] of less water than what has been paid for in advance, the [Entity] shall be entitled to be reimbursed for the appropriate proportion of such advance payments prior to the date of the [Entity]'s next payment of water transportation charges or the [Entity] may be given credit toward the next payment of water transportation charges if the [Entity] should so desire.

**10. WATER QUALITY:**

10.1 Neither the United States nor CAWCD warrants the quality of water transported through the CAP System to the [Entity] pursuant to this Contract and the United States and CAWCD are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any water transported through the CAP System. The [Entity] assumes all responsibility for purifying or otherwise treating Wheeled Water received at the Point of Delivery to meet applicable water quality standards established by federal, state or local authorities. The [Entity] waives its rights to make a claim against the United States, CAWCD or any Long-Term Contractor or contractor for Excess Water service on account of the quality of Wheeled Water or any changes in water quality caused by the commingling of Wheeled Water with Project Water and/or Non-Project water.

10.2 The [Entity] shall comply with and pay for all water quality monitoring, water quality reporting and water quality compliance and treatment requirements prescribed by CAWCD or the United States applicable to the transportation of Wheeled Water under this Contract, which requirements may be amended by CAWCD and/or the United States from time to time.

10.3 The [Entity] shall comply with all applicable state and federal laws, rules, and regulations governing the transportation of Wheeled Water under this Contract. All references in this Contract to laws, rules and regulations include all amendments and successor laws, rules, and regulations to such laws, rules and regulations.

10.4 Nothing in this Contract shall be construed to require CAWCD to receive or transport Wheeled Water if such water fails to meet water quality parameters established by CAWCD and the United States, which water quality parameters may be amended by CAWCD and the United States from time to time. Further, nothing in this Contract shall be construed to require that CAWCD receive or transport Wheeled Water from any source when such receipt or transportation is likely to result in a violation of then existing federal, state, or local laws or regulations regarding water quality. CAWCD has the right, without liability of any kind, to refuse to receive or transport Wheeled Water if such water fails to meet water quality parameters established by CAWCD and the United States and/or if such transportation is likely to result in a violation of then existing federal, state, or local laws or regulations regarding water quality.

10.5 The [Entity] shall indemnify and hold harmless CAWCD and the United States from and against any and all losses, claims, damages and other liabilities resulting from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System, and, at CAWCD's election, defend CAWCD against any such losses, claims, damages or other liabilities.

10.6 CAWCD shall cooperate fully with the [Entity] in the defense of any and all losses, claims, damages and other liabilities under this Section 10 and shall provide the [Entity] with all information and records necessary for the [Entity] to defend against such claims.

10.7 The [Entity]'s obligation to indemnify under this Section 10 shall encompass only:

10.7.1 The payment of losses, claims, damages and other liabilities that have been determined by mutual agreement of the [Entity] and CAWCD, and, if applicable, the United States, or by arbitration, or a court to have resulted from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System.

10.7.2 All costs incurred by CAWCD in defending against any and all losses, claims, damages and other liabilities resulting from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System and all costs incurred by CAWCD in cooperating with the [Entity] under Section 10.6.

## **11. LOSSES:**

Except for any volume of water transported under this Contract that is Firming Water, as that term is defined in the CAP System Use Agreement, the [Entity] shall be assessed uniform losses of 5% against all Wheeled Water transported through the CAP System under this Contract such that the amount of

Wheeled Water delivered at Point(s) of Delivery under this Contract will be 5% less than the amount of Wheeled Water entering the CAP System at the Point(s) of Receipt. Water transported under this Contract that is Firming Water shall bear no losses.

**12. RIGHT TO CONTRACT:**

CAWCD and the United States retain the right to contract directly with other entities desiring to transport Non-Project Water through the CAP System.

**13. PROCEDURE FOR SCHEDULING TRANSPORTATION OF WHEELED WATER:**

13.1 On or before October 1 of each Year, the [Entity] shall submit in writing to CAWCD a Water Delivery Schedule indicating the amounts of Wheeled Water the [Entity] desires to be transported from the Point(s) of Receipt to the Point(s) of Delivery during each month of the following Year, taking into account applicable losses.

13.2 Each year, after receipt of the schedule, CAWCD shall review it together with all other Water Delivery Schedules, and shall make such adjustments to the Entity's Water Delivery Schedule as are necessary to accommodate the CAP System physical and operational constraints and scheduling priorities identified in Subsection 10.1.2 and Section 11 of the CAP System Use Agreement, respectively.

13.3 On or before December 15 of each Year, CAWCD shall provide the [Entity] with a copy of the final Water Delivery Schedule for the following Year, which shall show the amount of Wheeled Water to be transported from the Point(s) of Receipt to the Point(s) of Delivery during each month of that Year and shall reflect applicable losses.

13.4 The monthly Water Delivery Schedule may be amended upon the [Entity]'s written request to CAWCD. Proposed amendments shall be submitted by the [Entity] to CAWCD no later than fifteen (15) days before the desired change is to become effective. CAWCD may modify proposed amendments to the [Entity]'s monthly Water Delivery Schedule as necessary to conform to previously approved Water Delivery Schedules. CAWCD shall notify the [Entity] of its action on the Entity's requested schedule modification within ten (10) days of CAWCD's receipt of such request.

13.5 In any one month during the Year, the [Entity] shall not be entitled to the transportation of greater than eleven percent (11%) of the maximum number of acre-feet per year of Wheeled Water that may be transported through the CAP System under this Contract, as shown in Exhibit 2.6 hereto. If requested by the [Entity], CAWCD may, at its sole discretion, transport more than 11% of the Wheeled



Water in a month only after satisfying all water deliveries scheduled pursuant to higher CAP System scheduling priorities as set forth in the Annual Operating Plan.

13.6 The [Entity] shall indemnify and hold CAWCD, its officers, agents and employees, and the United States, its officers, agents and employees, harmless from all damages and any claims of damage of any nature whatsoever arising out of or connected with the actions of CAWCD regarding water transportation schedules furnished by or to the [Entity].

**14. WATER TRANSPORTATION CHARGES:**

14.1 Annual Charges:

14.1.1 Fixed OM&R Charge: The [Entity] shall pay in advance the same Fixed OM&R Charge established annually by CAWCD for the delivery of Project Water in the CAP System. On or before the date of execution of this Contract, or as soon thereafter as is practicable, CAWCD shall notify the [Entity] of the Fixed OM&R Charge for the initial Year of water transportation ("initial Year"). Within a reasonable time of receipt of such notice, but prior to the transportation of Wheeled Water, the [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of the initial Year the Fixed OM&R Charge due for transportation of Wheeled Water scheduled for transportation in the initial Year. For each subsequent Year, CAWCD will establish the Fixed OM&R Charge and shall notify the [Entity] of the Fixed OM&R Charge for such subsequent Year on or before December 15 preceding each subsequent Year. The [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of said subsequent Year, the Fixed OM&R Charge due for transportation of Wheeled Water scheduled for transportation in said subsequent Year.

14.1.2 Pumping Energy Charge: The [Entity] shall pay in advance the same Pumping Energy Charge established annually by CAWCD for the delivery of Project Water in the CAP System. On or before the date of execution of this Contract, or as soon thereafter as is practicable, CAWCD shall notify the [Entity] of the Pumping Energy Charge for the initial Year of water transportation ("initial Year"). Within a reasonable time of receipt of such notice, but prior to the transportation of Wheeled Water, the [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of the initial Year the Pumping Energy Charge due for transportation of Wheeled Water scheduled for transportation in the initial Year. For each subsequent Year, CAWCD will establish the Pumping Energy Charge and shall notify the [Entity] of the Pumping Energy Charge for such subsequent Year on or before December 15 preceding each subsequent Year. The [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of said subsequent Year, the

Pumping Energy Charge due for transportation of Wheeled Water scheduled for transportation in said subsequent Year. The [Entity] shall receive credit for the Pumping Energy Charges associated with any Wheeled Water scheduled for transportation that is not transported through the CAP System to the Point(s) of Delivery.

14.1.3 Capital Equivalency Charge: In addition to the Fixed OM&R Charges and the Pumping Energy Charges required in Sections 14.1.1 and 14.1.2, each Year the [Entity] shall make payment to CAWCD in equal semiannual installments of a Capital Equivalency Charge. The amount of this charge in any Year shall be equal to the M&I water service capital charge, as published in CAWCD's annual rate schedule for that year, multiplied by the maximum number of acre-feet per year of Wheeled Water that may be transported through the CAP System under this Contract as set forth in Exhibit 2.8, regardless of the amount to be transported in any given Year. The Capital Equivalency Charge payment for the initial Year shall be advanced to CAWCD in equal semiannual installments on or before December 1 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent Year, payments by the [Entity] in accordance with the foregoing provisions shall be made in equal semiannual installments on or before the December 1 preceding said subsequent Year and the June 1 of said subsequent Year as may be specified by CAWCD in written notices to the [Entity]. CAWCD shall deposit the Capital Equivalency Charge revenues to the Colorado River Basin Development Fund.

14.2 The payment of all water transportation charges when due as stipulated in Sections 14.1.1, 14.1.2 and 14.1.3 of this Contract is a condition precedent to the transportation of Wheeled Water through the CAP System.

14.3 The obligation of the [Entity] to pay CAWCD as provided in this Contract is a general obligation of the [Entity] notwithstanding the manner in which the obligation may be distributed among the [Entity]'s water users and notwithstanding the default of individual water users in their obligations to the [Entity].

**15. CHARGES FOR DELINQUENT PAYMENTS AND REMEDIES FOR FAILURE TO PAY:**

15.1 The Entity shall be subject to interest, administrative and penalty charges on delinquent installments or payments. The [Entity] shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the [Entity] shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the [Entity] shall pay an additional penalty charge of six

percent (6%) per year for each day the payment is delinquent beyond the due date. Further, the Entity shall pay any fees incurred for debt collection services associated with a delinquent payment.

15.2 The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

15.3 In the event any delinquent amount is not paid by the [Entity] within thirty (30) days after receipt by the [Entity] of written notice by CAWCD to the [Entity] of the delinquency, CAWCD shall have the right, without liability of any kind, to refuse to transport Wheeled Water so long as the said amount remains unpaid and may terminate this Contract. Nothing herein shall limit the rights of CAWCD to use any available legal remedy to effect collection of said amounts.

**16. RULES, REGULATIONS AND DETERMINATIONS:**

CAWCD and the [Entity] agree that the transportation of Wheeled Water pursuant to this Contract is subject to Federal Reclamation law, as amended and supplemented, and the rules and, regulations, promulgated by the Secretary of the Interior under Federal Reclamation law. The Secretary shall have the right to make determinations necessary to administer this Contract that are consistent with its expressed and implied provisions, the laws of the United States and the State of Arizona, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with CAWCD and [the Entity].

**17. COMPLIANCE WITH ENVIRONMENTAL LAWS:**

The [Entity], in carrying out this Contract, shall comply with all applicable environmental laws and regulations of the United States and the State of Arizona and shall obtain all required approvals, permits, or licenses from the appropriate Federal, State, or local authorities.

**18. UNCONTROLLABLE FORCES:**

Neither CAWCD nor the Entity shall be considered to be in default in the performance of any of its obligations hereunder (other than the obligations of the Entity to make payment for service 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, fir, lightning and other

**11-9-16 DRAFT**

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.

**19. NOTICES:**

Any notice, demand, or request authorized or required by this Contract shall be in writing and delivered in person, or sent by registered or certified mail, postage prepaid, to:

CAWCD:

Central Arizona Water Conservation District  
General Manager  
P.O. Box 43020  
Phoenix, Arizona 85090-3020

[ENTITY]:

**20. WAIVER:**

The waiver by either Party of any breach of any term, covenant or condition herein contained 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 contained.

**21. GOVERNING LAW:**

This Contract is made under, and shall be governed by, applicable Federal law and, if none, the laws of the State of Arizona.

**22. ASSIGNMENT:**

The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract shall be valid until approved by CAWCD and the United States.

**23. EXHIBITS:**

The exhibits attached hereto may be modified by mutual consent of CAWCD and the [Entity], subject to the approval of the United States. The initial exhibits are attached hereto and each is incorporated into this Contract until superseded by a subsequent exhibit which shall then be incorporated into this Contract.

**24. MODIFICATIONS:**

This standard form of CAWCD Wheeling Contract may only be supplemented, amended, or modified with the consent of the United States and CAWCD. No supplement, amendment or modification will be binding unless it is in writing or signed by the United States and CAWCD.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract effective the day and year first above-written.

Approved as to Form:

**[ENTITY]**

By: \_\_\_\_\_  
Its:

By: \_\_\_\_\_  
Its:

Approved as to Form:

**CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT**

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
President

**11-9-16 DRAFT**

**APPROVAL OF THE UNITED STATES:**

In accordance with Article 8.18 of the Master Repayment Contract, the foregoing Wheeling Contract between the Central Arizona Water Conservation District and the [Entity] is hereby approved.

United States of America

By: \_\_\_\_\_

[PXAO Area Mgr or LCR Regional Director]

Bureau of Reclamation

**EXHIBITS** (not attached)

- Exhibit 2.2: Place of Use
- Exhibit 2.3: Locations of Point(s) of Receipt
- Exhibit 2.4: Location of Point(s) of Delivery
- Exhibit 2.5: System Improvement Project(s)
- Exhibit 2.6: Description of Wheeled Water
- Exhibit 5.1: Reclamation's initial determination of Projected Additional Operational Capability.
- Exhibit 5.2: Reclamation's final determination of Verified Additional Operational Capability
- Exhibit 6: Environmental clearances from the United States
- Exhibit 10.2 (Possible): Water Quality Monitoring and Reporting Plan

**EXHIBIT C**

**DRAFT STANDARD TERMS AND CONDITIONS FOR  
RECLAMATION WHEELING CONTRACTS  
TO TRANSPORT NON-PROJECT WATER**

**1. DEFINITIONS:**

Definitions included in the Master Repayment Contract, the Repayment Stipulation, and the CAP System Use Agreement are applicable to this [Reclamation Wheeling Contract (“Contract”)]. The first letters of terms so defined are capitalized herein. In addition, the following terms, when capitalized, have the meanings indicated:

1.1 Capital Equivalency Charge: An amount equal to the M & I water service capital charge, as published in CAWCD’s annual rate schedule for a particular Year, multiplied by the maximum number of acre-fee per year of Wheeled Water that may be transported through the CAP System under this Contract, as shown in Exhibit 2.6 hereto, regardless of the amount to be transported in any given Year.

1.2 Place of Use: The service area or place of use depicted on the map in Exhibit 2.2 hereto.

1.3 Point(s) of Receipt: The location(s) designated in Exhibit 2.3, hereto, where Wheeled Water will enter the CAP System.

1.4 Point(s) of Delivery: The location(s) designated in Exhibit 2.4, hereto, where Wheeled Water is diverted from the CAP System for delivery to or on behalf of the [Entity].

1.5 Wheeled Water: The Non-Project Water, of the type or source available to the [Entity] under a contract, decree, or statute, all as specified in Exhibit [ ] to this Contract, to be transported through the CAP System pursuant to this Contract.

**2. TERM:**

This Contract shall become effective on the date first written above and shall remain in effect until the termination of [the Entity’s] contract or other right to Wheeled Water specified in Subsection 1.5 of this Contract, unless otherwise terminated in accordance with the provisions of this Contract.

**3. ENVIRONMENTAL CLEARANCE:**

Wheeled Water shall not be delivered to the [Entity] unless and until the [Entity] has obtained final environmental clearance from the United States for the transportation of Wheel Water through the CAP System and for the system or systems through which Wheeled Water is to be conveyed from the Point(s) of Delivery to the Place of Use. Such system(s) shall include all pipelines, canals, distribution systems,



treatment, storage, and other facilities through or in which Wheeled Water is conveyed. Wheeled Water shall only be transported for the [Entity] in a manner consistent with the final environmental clearances from the United States.

**4. POINT(S) OF DELIVERY, POINT(S) OF RECEIPT, MEASUREMENT AND RESPONSIBILITY:**

4.1 The United States will coordinate with CAWCD for the transportation of Wheeled Water from the Point(s) of Receipt to the Point(s) of Delivery for delivery to or for the benefit of the [Entity].

4.2 The [Entity] shall secure from CAWCD all necessary land use permits, as provided under Section 7.2.8 of the Operating Agreement, for facilities to be located within the CAP System right-of-way for the purpose of conveying Wheeled Water to the CAP System Point(s) of Receipt and from the Point(s) of Delivery to the Place of Use. Unless CAWCD and the [Entity] agree in writing to the contrary, the [Entity] shall construct and install, at its sole cost and expense: (i) all facilities required to transport Wheeled Water to the Point(s) of Receipt; and (ii) all facilities required to transport Wheeled Water from the Point(s) of Delivery to the Place of Use. The [Entity] shall furnish to CAWCD, drawings and specifications showing all such facilities to be constructed or installed within the CAP System right-of-way, and shall obtain CAWCD's written approval before commencing construction or installation of such facilities. All facilities constructed, installed, operated or maintained on the CAP System right-of-way by or for the [Entity] shall be subject to such further agreements and to such restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by CAWCD.

4.3 Upon termination of this Contract and written notice from CAWCD, the [Entity] shall promptly remove, at its sole cost and expense, all facilities constructed or installed on the CAP System right-of-way under this Contract and restore said right-of-way and all Project facilities affected to their condition immediately prior to the construction or installation of such connection facilities. If the [Entity] fails to remove said facilities and restore said right-of-way and Project facilities within thirty (30) days after receiving any written notice from CAWCD to do so, CAWCD may remove said facilities and restore said right-of-way and Project facilities at the [Entity]'s cost and expense. Within thirty (30) days after receiving written demand from CAWCD to do so, the [Entity] shall pay CAWCD, as specified in such written demand, for all costs and expenses incurred by CAWCD in removing said facilities and restoring said right-of-way and Project facilities.

4.4 When making or considering modifications to the transferred works, CAWCD shall comply with the terms of Article 12 of the Operating Agreement. If modification of the CAP System is required to allow for the interconnection between the CAP System and the [Entity]'s facilities constructed

on the CAP System right-of-way, including construction of one or more additional CAP turnouts, CAWCD shall make such interconnection modifications at the sole expense of the Entity which shall advance fund CAWCD's costs.

4.5 All Wheeled Water shall be measured with equipment that complies with CAWCD and United States standards and shall be operated and maintained by CAWCD. Upon request of the Entity, the accuracy of such measurements shall be investigated by CAWCD and the Entity, and any errors which are mutually determined to have occurred shall be adjusted; Provided, however, if CAWCD and the Entity cannot agree on the required adjustment, CAWCD's determination shall be conclusive, subject to review and revision by the Secretary.

4.6 If the [Entity] intends to transport Wheeled Water through facilities on the CAP System right-of-way that are owned or operated by entities other than the United States or CAWCD, the use by the [Entity] of such facilities shall be the subject of written agreement(s) between the [Entity] and the owner(s) or operator(s) of such facilities.

4.7 Neither the United States nor CAWCD shall be responsible for the control, carriage, handling, use, disposal, or distribution of water up to the Point(s) of Receipt or beyond the Point(s) of Delivery. The [Entity] shall indemnify and hold the United States and CAWCD harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of water up to the Point(s) of Receipt or beyond the Point(s) of Delivery.

**5. PLACE OF USE:**

Wheeled Water shall be used in the Place of Use.

**6. INTERRUPTIONS AND REDUCTIONS**

The United States and/or CAWCD may discontinue or reduce the quantity of Wheeled Water to be transported as herein provided for the purposes of investigation, inspection, construction, testing, maintenance, repair, or replacement of any of the Project facilities or any part thereof. CAWCD shall attempt to coordinate any such discontinuance or reduction with the [Entity] and give the [Entity] due notice in advance of such discontinuance or reduction. In case of emergency, no notice need be given. The United States, its officers, agents, and employees, and CAWCD, its officers, agents, and employees, shall not be liable for damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in transportation of Wheeled Water occurs. If any such discontinuance or temporary reduction

results in transportation for the [Entity] of less water than what has been paid for in advance, the [Entity] shall be entitled to be reimbursed for the appropriate proportion of such advance payments prior to the date of the [Entity]'s next payment of water transportation charges or the [Entity] may be given credit toward the next payment of water transportation charges if the [Entity] should so desire.

## **7. WATER QUALITY**

7.1 Neither the United States nor CAWCD warrants the quality of water transported through the CAP System to the [Entity] pursuant to this Contract and the United States and CAWCD are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any water transported through the CAP System. [Entity] assumes all responsibility for purifying or otherwise treating Wheeled Water received at the Point of Delivery to meet applicable water quality standards established by federal, state or local authorities. The [Entity] waives its rights to make a claim against the United States, CAWCD or any Long-Term Contractor or contractor for Excess Water service on account of the quality of Wheeled Water or any changes in water quality caused by the commingling of Wheeled Water with Project Water and/or Non-Project Water.

7.2 The [Entity] shall comply with and pay for all water quality monitoring, water quality reporting and water quality compliance and treatment requirements prescribed by CAWCD or the United States applicable to the transportation of Wheeled Water under this [Reclamation Wheeling Contract/Federal Arrangement], which requirements may be amended by CAWCD and/or the United States from time to time.

7.3 The [Entity] shall comply with all applicable state, and federal laws, rules, and regulations governing the transportation of Wheeled Water under this Contract. All references in this Contract to laws, rules and regulations include all amendments and successor laws, rules, and regulations to such laws, rules and regulations

7.4 Nothing in this Contract shall be construed to require CAWCD to receive or transport Wheeled Water if such water fails to meet water quality parameters established by CAWCD and the United States, which water quality parameters may be amended by CAWCD and the United States from time to time. Further, nothing in this [Reclamation Wheeling Contract/Federal Arrangement] shall be construed so as to require that CAWCD receive or transport Wheeled Water from any source when such receipt or transportation is likely to result in a violation of then existing federal, state, or local laws or regulations regarding water quality. CAWCD shall have the right, without liability of any kind, to refuse to transport Wheeled Water if such water fails to meet water quality parameters established by CAWCD

and the United States and/or if such transportation is likely to result in a violation of then existing federal, state, or local laws or regulations regarding water quality.

7.5 The [Entity] shall indemnify and hold harmless CAWCD and the United States from and against any and all losses, claims, damages and other liabilities resulting from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System, and, at CAWCD's election, defend CAWCD against any such losses, claims, damages or other liabilities.

7.6 CAWCD shall cooperate fully with the [Entity] in the defense of any and all losses, claims, damages and other liabilities under this Section 7 and shall provide the [Entity] with all information and records necessary for the [Entity] to defend against such claims.

7.7 The [Entity]'s obligation to indemnify under this Section 7 shall encompass only:

7.7.1 The payment of losses, claims, damages and other liabilities that have been determined by mutual agreement of the [Entity] and CAWCD, and, if applicable, the United States, or by arbitration or a court to have resulted from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System.

7.7.2 All costs incurred by CAWCD in defending against any and all losses, claims, damages and other liabilities resulting from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System and all costs incurred by CAWCD in cooperating with the [Entity] under Section 7.6.

## **8. LOSSES**

Except for any volume of water transported under this Contract that is Firming Water, as that term is defined in the CAP System Use Agreement, the [Entity] shall be assessed uniform Losses of 5% against all Wheeled Water transported through the CAP System under this Contract such that the amount of Wheeled Water delivered at Point(s) of Delivery under this Contract will be 5% less than the amount of Wheeled Water entering the CAP System at the Point(s) of Receipt. Water transported under this Contract that is Firming Water shall bear no losses.

## **9. PROCEDURE FOR SCHEDULING WATER**

9.1 On or before October 1 of each Year, the [Entity] shall submit in writing to CAWCD a Water Delivery Schedule indicating the amounts of Wheeled Water the [Entity] desires to be transported from the Point(s) of Receipt to the Point(s) of Delivery during each month of the following Year, taking into account applicable losses.

9.2 Each year, after receipt of the schedule, CAWCD shall review it together with all other Water Delivery Schedules, and shall make such adjustments to the Entity's Water Delivery Schedule as are necessary to accommodate the physical and operational constraints and scheduling priorities identified in Subsection 10.1.2 and Section 11 of the CAP System Use Agreement, respectively.

9.3 On or before December 15 of each Year, CAWCD shall provide the [Entity] with a copy of the final Water Delivery Schedule for the following Year, which shall show the amount of Wheeled Water to be transported from the Point(s) of Receipt to the Point(s) of Delivery during each month of that Year and shall reflect a uniform 5% loss assessment.

9.4 The monthly Water Delivery Schedule may be amended upon the [Entity]'s written request to CAWCD. Proposed amendments shall be submitted by the [Entity] to CAWCD no later than fifteen (15) days before the desired change is to become effective. CAWCD may modify proposed amendments to the [Entity's] monthly Water Delivery Schedule as necessary to conform to previously approved Water Delivery Schedules. CAWCD shall notify the [Entity] of its action on the Entity's requested schedule modification within ten (10) days of CAWCD's receipt of such request.

9.5 In any one month during the Year, the [Entity] shall not be entitled to the transportation of greater than eleven percent (11%) of the maximum number of acre-feet per year of Wheeled Water that may be transported through the CAP System under this Contract, as shown in Exhibit 2.6 hereto. If requested by the [Entity], CAWCD may, at its sole discretion, transport more than 11% of the Wheeled Water in a month only after satisfying all water deliveries scheduled pursuant to higher CAP System Scheduling Priorities as set forth in the Annual Operating Plan.

9.6 The [Entity] shall indemnify and hold CAWCD, its officers, agents and employees, and the United States, its officers, agents and employees, harmless from all damages and any claims of damage of any nature whatsoever arising out of or connected with the actions of CAWCD regarding water transportation schedules furnished by or to the [Entity].

## **10. CHARGES**

### **10.1 Annual Charges:**

10.1.1 Fixed OM&R Charge: The [Entity] shall pay in advance the same Fixed OM&R Charge established annually by CAWCD for the delivery of Project Water in the CAP System. On or before the date of execution of this Contract, or as soon thereafter as is practicable, CAWCD shall notify the [Entity] of the Fixed OM&R Charge for the initial Year of water transportation ("initial Year"). Within a reasonable time of receipt of such notice, but prior to the transportation of Wheeled Water, the [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each

month of the initial Year the Fixed OM&R Charge due for transportation of Wheeled Water scheduled for transportation in the initial Year. For each subsequent Year, CAWCD will establish the Fixed OM&R Charge and shall notify the [Entity] of the Fixed OM&R Charge for such subsequent Year on or before December 15 preceding each subsequent Year. The [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of said subsequent Year the Fixed OM&R Charge due for transportation of Wheeled Water scheduled for transportation in said subsequent Year.

10.1.2 Pumping Energy Charge: The [Entity] shall be assessed, and pay in advance, the same Pumping Energy Charge established annually by CAWCD for the delivery of Project Water in the CAP System. On or before the date of execution of this Contract, or as soon thereafter as is practicable, CAWCD shall notify the [Entity] of the Pumping Energy Charge for the initial Year of water transportation ("initial Year"). Within a reasonable time of receipt of such notice, but prior to the transportation of Wheeled Water, the [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of the initial Year the Pumping Energy Charge due for transportation of Wheeled Water scheduled for transportation in the initial Year. For each subsequent Year, CAWCD will establish the Pumping Energy Charge and shall notify the [Entity] of the Pumping Energy Charge for such subsequent Year on or before December 15 preceding each subsequent Year. The [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of said subsequent Year the Pumping Energy Charge due for transportation of Wheeled Water scheduled for transportation in said subsequent Year. The [Entity] shall receive credit for the Pumping Energy Charges associated with any Wheeled Water scheduled for transportation that is not transported through the CAP System to the Point(s) of Delivery.

10.1.3 Capital Equivalency Charge: In addition to the Fixed OM&R Charges and the Pumping Energy Charges required in Sections 8.1.1 and 8.1.2, each Year the [Entity] shall make payment to CAWCD in equal semiannual installments of a Capital Equivalency Charge. The amount of this charge in any Year shall be equal to the M&I water service capital charge, as published in CAWCD's annual rate schedule for that year, multiplied by the maximum number of acre-feet per year of Wheeled Water that may be transported through the CAP System under this Contract, regardless of the amount to be transported in any given Year. The Capital Equivalency Charge payment for the initial Year shall be advanced to CAWCD in equal semiannual installments on or before December 1 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent Year, payments by the [Entity] in accordance with the foregoing provisions shall be made in equal semiannual installments on or before the December 1 preceding said subsequent Year and the June 1 of said subsequent Year as may be specified

**11-9-16 DRAFT**

by CAWCD in written notices to the [Entity]. CAWCD shall deposit the Capital Equivalency Charge revenues to the Colorado River Basin Development Fund.

10.2 The payment of all water transportation charges when due as stipulated in Sections 8.1.1, 8.1.2, and 8.1.3 of this Contract is a condition precedent to the transportation of Wheeled Water through the CAP System.

10.3 The obligation of the [Entity] to pay CAWCD as provided in this Contract is a general obligation of the [Entity] notwithstanding the manner in which the obligation may be distributed among the [Entity]'s water users and notwithstanding the default of individual water users in their obligations to the [Entity].

**11. CHARGES FOR DELINQUENT PAYMENTS AND REMEDIES FOR FAILURE TO PAY:**

11.1 The Entity shall be subject to interest, administrative and penalty charges on delinquent installments or payments. The [Entity] shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the [Entity] shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the [Entity] shall pay an additional penalty charge of six percent (6%) per year for each day the payment is delinquent beyond the due date. Further, the Entity shall pay any fees incurred for debt collection services associated with a delinquent payment.

11.2 The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

**12. SCHEDULING PRIORITIES**

The scheduling and delivery of Wheeling Water pursuant to this Contract shall be subject to the CAP System Use Scheduling Priorities as set forth in the CAP System Use Agreement.

**13. MODIFICATIONS:**

This standard form of Reclamation Wheeling Contract may only be supplemented, amended, or modified with the consent of the United States and CAWCD. No supplement, amendment or modification will be binding unless it is in writing or signed by the United States and CAWCD.