

## Agenda Number 5.

**CONTACT:** Suzanne Ticknor  
sticknor@cap-az.com  
623-869-2410

Ken Seasholes  
kseasholes@cap-az.com  
623-869-2476

**MEETING DATE:** February 2, 2017

**AGENDA ITEM:** Consideration of Action to Approve the CAP System Use Agreement between the United States and the Central Arizona Water Conservation District, and to authorize its execution on behalf of the Central Arizona Water Conservation District

**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

December 1, 2016, - Update on Draft System Use Agreement, Board Action Delegating Authority to Executive Committee to Approve CAP System Use Agreement

**ISSUE SUMMARY/DESCRIPTION:**

At the December 1, 2016, Board meeting, staff reviewed the terms of the CAP System Use Agreement between the United States and CAWCD ("SUA") and summarized the comments to the SUA submitted by stakeholders. At that time, the United States Bureau of Reclamation was still consulting with Arizona Tribes about the SUA, and had asked for written comments from the Tribes no later than December 5, 2016. Because tribal consultation was not complete at the regular December Board meeting, the Board did not take action to approve the SUA. However, the Board did take action to delegate authority to the Executive Committee to approve the SUA and authorize its execution by the Board President, anticipating potential action by the Executive Committee in December 2016 and execution of the SUA at the annual Colorado River Water Users Association Conference ("CRWUA"), which was December 14-16, 2016.

Reclamation did not complete its tribal consultation before CRWUA, and the SUA has not been executed. However, Reclamation advised staff this week that it will complete tribal consultation on the SUA on January 26, 2017 and will be prepared to execute the SUA on February 2.

At the December 1 Board meeting, staff advised the Board that it would be working through all of the comments submitted and would strive to develop a final execution version of the SUA. CAWCD and Reclamation have worked through all the comments received to date and have made some changes to the version of the SUA presented to the Board on December 1, 2016. Staff has prepared a summary of the edits to the draft of the SUA and its exhibits (Exhibits A, B and C). The summary is attached; it itemizes, by section number, the change made to address comments received during the CAWCD stakeholder process and comments from Reclamation resulting from conclusion of its tribal consultation process. Additional changes to fix typographical errors or other minor cleanup changes are not itemized in the summary. None of the edits to the version of the SUA and exhibits presented at the December 1, 2016 Board meeting, materially alter the original intent of the parties drafting the agreement.

As of the writing of this Board Brief, Reclamation has not fully completed tribal consultation. CAWCD and Reclamation staff have a meeting scheduled on January 30, 2017 to review any final comments arising out of Reclamation's final consultation meeting. The parties intend to prepare a final execution version of the SUA at the January 30 meeting. The final SUA will be posted on CAWCD's website early next week and will be made available to the Board before the regular February Board meeting.

**SUGGESTED MOTION:**

I move that the Board approve the CAP System Use Agreement between the United States and the Central Arizona Water Conservation District, and authorize its execution on behalf of the Central Arizona Water Conservation District.

Attachment.

## **Agenda Number 5. Attachment.**

### **Summary of Changes to Draft System Use Agreement and Exhibits**

This document provides a summary of edits to the drafts of the System Use Agreement and its exhibits<sup>1</sup> presented to the CAWCD Board at the December 1, 2016 Board Meeting that Staff anticipates will be reflected in the final execution version of those documents. The edits were made to address comments received during the CAWCD stakeholder process and comments from Reclamation, some of which resulted from Reclamation's tribal consultation process. The summary below is limited to changes to clarify the intent of existing language or substantive changes to address the concerns of tribal and non-tribal stakeholders. Additional changes to fix typographical errors or other minor cleanup changes are not summarized below.

#### **System Use Agreement**

- Subsection 2.23 – Language added to recital at this subsection to note that Firming for Long-Term Contracts includes Firming for Indian Long-Term Contracts. This language is redundant but was added at Reclamation's request to address a comment received during the tribal consultation process.
- Subsection 3.8 – Definition of CAP System – Definition revised to reference CAP System as the “Transferred Works” of the Central Arizona Project and to add reference to New Waddell Dam. The agreement previously referred separately to the CAP System and the Transferred Works, which implied a difference between the two that was not intended. Other conforming changes were made throughout the agreement so that it refers only to the “CAP System.”
- Subsections 3.19 – 3.21 – Definitions of Exhibits A, B and C to the System Use Agreement added.
- Subsection 3.31 – Definition of “On-River Firming” – Definition revised to clarify that “On-River Firming” means the “implementation of” agreements for such purposes and to clarify that it includes existing agreements.
- Subsection 5.1 – CAWCD Use of CAP System – Redundant language referencing priorities for use of CAP System under Section 11 of the agreement was removed. “On-River Firming” and “Satisfaction of Interstate Agreement” moved to their own subcategories rather than listing them as a type of Non-Project Water delivery.
- Subsection 7.1 – Reclamation Wheeling – Deleted language providing that Reclamation Wheeling Contracts and Federal Arrangements only needed to be consistent with Long-Term Contracts “to which CAWCD is not a party.” A similar change was made to Subsections 8.5 (Firming) and 9.3.3 (Exchanges).

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<sup>1</sup> Exhibit A (Map of CAP System Segments and CAP Terminus); Exhibit B (Standard Form of CAWCD Wheeling Contract); and Exhibit C (Terms of Reclamation Wheeling Contract).

- Subsection 7.2 – Language revised to provide that terms of Reclamation Wheeling Contracts will incorporate provisions “substantially similar” to those in Exhibit C.
- Subsection 7.3 – Language added to provide that Reclamation will consult with CAWCD on any variations in the terms a Federal Arrangement from the terms set forth in Exhibit C.
- Subsection 11.1.1 – Priority for CAP System Use – Language revised to clarify that deliveries for Long-Term Contracts that are only able to take their Project Water by exchange will have First Priority if deliveries are within or upstream of Segment where point of delivery for Long-Term Contractor’s exchange is located.
- Subsection 12.3 – Water Quality Indemnification – Language revised to be consistent with similar language in Exhibits B and C.
- Subsection 13.7 – System Improvement Projects – Language revised to clarify that construction of System Improvement Projects may not commence until after completion of environmental compliance and receipt of written consent from Reclamation.
- Subsection 13.13 – System Improvement Projects – Language added to indemnify the United States against claims arising from a determination of Projected Additional Operational Capability or Verified Additional Operational Capability.
- Subsection 14.1 – Water Charges – Language added to clarify that Long-Term Contractors are only responsible to pay Fixed OM&R Charges, Pumping Energy Charges and applicable capital charges if those charges are not paid by the United States.
- Subsection 14.3 – Capital Equivalency Charges – Language revised to clarify that these charges are not applicable to Firming Water, and that the revenues for such charges will be deposited to the Lower Colorado River Basin Development Fund.
- Subsection 16.9 – Exhibits – Language added that requires written agreement of both parties to modify exhibits.

**Exhibit B (Form of CAWCD Wheeling Contract)**

- Subsection 9 – Interruptions and Reductions – Language revised to change “water transportation charges” to “Fixed OM&R Charges and Pumping Energy Charges.”
- Subsection 10.4 – Water Quality – Language revised to change water quality “parameters” to “standards” consistent with System Use Agreement. Reference to compliance with “local” laws deleted.

- Subsections 10.5-10.7 – Water Quality Indemnification – Language revised to clarify scope of indemnification. Term “costs” substituted for “losses” to avoid confusion with reference to system losses in other portions of exhibits and agreement.
- Subsection 13.5 – Monthly Delivery Limitations – Language revised to clarify exception to default rule that no more than 11% of Wheeled Water may be delivered in a given month.
- Subsection 14.1.3 – Capital Equivalency Charges – Language revised to clarify that water delivered for Firming is not subject Capital Equivalency Charges.
- Section 24 – Modifications – Section deleted. Language controlling modification of the terms of Exhibits B and C included in System Use Agreement.

### **Exhibit C (Terms of Reclamation Wheeling Contracts)**

- Subsection 4.7 – Indemnification – Language revised to be consistent with Exhibit B.
- Subsection 6 – Interruptions and Reductions – Language revised to change “water transportation charges” to “Fixed OM&R Charges and Pumping Energy Charges.”
- Subsection 7.4 – Water Quality – Language revised to change water quality “parameters” to “standards” consistent with System Use Agreement. Reference to compliance with “local” laws deleted.
- Subsections 7.5-7.7 – Water Quality Indemnification – Language revised to clarify scope of indemnification. Term “costs” substituted for “losses” to avoid confusion with reference to system losses in other portions of exhibits and agreement.
- Subsection 9.5 – Monthly Delivery Limitations – Subsection deleted at request of Reclamation based on comments received during tribal consultation process. CAWCD also received a comment from a tribal stakeholder expressing concern about this subsection.
- Subsection 10.1.3 – Capital Equivalency Charges – Language revised to clarify that water delivered for Firming is not subject Capital Equivalency Charges.
- Section 13 – Modifications – Section deleted. Language controlling modification of the terms of Exhibits B and C included in System Use Agreement.

**Addendum to**

**Summary of Changes to Draft System Use Agreement and Exhibits**

This document provides a summary of additional edits incorporated into the final drafts of the System Use Agreement and its exhibits<sup>1</sup> following the final negotiating session between CAWCD and Reclamation on January 30, 2017. The summary below is limited to changes to clarify the intent of existing language or other substantive changes. Additional changes to fix typographical errors or other minor cleanup changes are not summarized below.

**System Use Agreement**

- Subsections 2.3 and 2.4 – New recitals relating to CAP water allocations to Arizona Indian Tribes added to agreement. This language was added at Reclamation’s request to address comments received during the tribal consultation process.
- Subsection 11.5 – Language added that CAWCD will indemnify the United States from damages resulting from claims against the United States arising from CAWCD’s implementation of the scheduling priorities for use of CAP System capacity in Section 11 of the Agreement. The indemnification does not extend to damages resulting from claims challenging the scheduling priorities.

**Exhibit B (Form of CAWCD Wheeling Contract)**

- Subsection 14.1.3 – Capital Equivalency Charges – Language added that provides that CAWCD and the United States will consult regarding any appropriate charges for wheeling of Non-Project Water in addition to Fixed OM&R and Pumping Energy Charges following fulfillment of CAWCD’s repayment obligation. This language was added at Reclamation’s request to address comments received during the tribal consultation process.

**Exhibit C (Terms of Reclamation Wheeling Contracts)**

- Subsection 10.1.3 – Capital Equivalency Charges – Language added that provides that CAWCD and the United States will consult regarding any appropriate charges for wheeling of Non-Project Water in addition to Fixed OM&R and Pumping Energy Charges following fulfillment of CAWCD’s repayment obligation. This language was added at Reclamation’s request to address comments received during the tribal consultation process.

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<sup>1</sup> Exhibit A (Map of CAP System Segments and CAP Terminus); Exhibit B (Standard Form of CAWCD Wheeling Contract); and Exhibit C (Terms of Reclamation Wheeling Contract).

## **Agenda Number 5.**

Agreement No. 17-XX-30-W0622

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

1. **PREAMBLE:** THIS CENTRAL ARIZONA PROJECT (“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, each being referred to individually as “Party” and collectively as the “Parties”.

**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 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 for the generation and sale of electrical power as an incident of the foregoing purposes”;

2.3 WHEREAS, the United States has allocated CAP water to various Arizona Indian Tribes as part of Indian water rights settlements or in anticipation of Indian water rights settlements, and has entered into Long-Term Contracts with several Arizona Indian Tribes for the delivery of CAP water;

2.4 WHEREAS, the United States has an interest in ensuring Arizona Indian Tribes with Long-Term Contracts receive their allocation of CAP water pursuant to the terms of their Long-Term

Contracts, and in times of a Water Shortage, that all Arizona Indian Tribes with Long-Term Contracts have the opportunity to firm the delivery of their CAP allocation using the CAP System;

2.5 WHEREAS, Section 103 of the Arizona Water Settlements Act (“AWSA”), Pub. L. 108-451, provides that, “In accordance with the CAP Master Repayment Contract, the CAP 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;”

2.6 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;

2.7 WHEREAS, as required by Section 105 of the Arizona Water Settlements Act (“AWSA”) and in accordance with the Arizona Revised Statutes (“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;

2.8 WHEREAS, in accordance with Title 45, Chapter 14, Articles 1 through 5 of A.R.S., 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 municipal and industrial (“M&I”) supplies for Long-Term Contractors, (c) to firm water supplies for certain M&I users of Colorado River water in the State of 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 of Arizona commitments to firm Indian Settlement water;

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

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



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

2.12 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 the State of Arizona's obligations under Section 105 of the AWSA; firm CAP M&I supplies for Long-Term Contractors; firm certain M&I uses of Colorado River water in Arizona located outside the service area of CAWCD; and meet interstate firming obligations;

2.13 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;

2.14 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;

2.15 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 Contractor's service area or reservation;

2.16 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 Contractors;

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

2.18 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, that such additional Operational Capability will not exceed the annual system capacity authorized in the Basin Project Act;

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

2.20 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;

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

2.22 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;

2.23 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;

2.24 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

2.25 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, including Firming for Indian Long-Term Contractors, (d) to facilitate the use of the CAP System to firm certain M&I use of Colorado River water in the State of 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 to 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 “Arizona Water Settlements Act or AWSA” means the Arizona Water Settlements Act, Pub. L. 108-451, 118 Stat. 3478, dated December 10, 2004, as amended.

3.4 “A.R.S.” means the Arizona Revised Statutes.

3.5 “Banking Authority” means the Arizona Water Banking Authority or its successor agency.

3.6 “Basin Project Act” means the Colorado River Basin Project Act, Pub. L. 90-537, 82 Stat. 885, dated September 30, 1968, as amended.

3.7 “CAP” means the Central Arizona Project.

3.8 “CAP System” means all of the Transferred Works of the CAP including but not limited to: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) the New Waddell Dam; (F) any pumping plant or appurtenant works of a feature described in any of (A) through (E); and (G) any extension of, addition to, or replacement for a feature described in any of (A) through (F).

3.9 “CAP Terminus” means the terminus of the CAP System as depicted on the map attached hereto as Exhibit A.

3.10 “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.

3.11 “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 pursuant to Article 8.18 of the Master Repayment Contract.

3.12 “Central Arizona Groundwater Replenishment District” means the replenishment authorities granted to CAWCD in Title 48, Chapter 22, Article 4 of A.R.S., which are exercised as a function of CAWCD.

3.13 “Downstream” means the direction along the CAP System towards the CAP Terminus.

3.14 “Excess Water” means that water defined as Excess Water in the Repayment Stipulation.

3.15 “Excess Water Contract” means an agreement between CAWCD and a water user for the delivery of Excess Water.

3.16 “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.

3.17 “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.

3.18 “Exchange Water” means Project Water exchanged for Non-Project Water pursuant to an Exchange Agreement.

3.19 “Exhibit A” is a map of the CAP System. Exhibit A is attached hereto and by this reference made a part hereof.

3.20 “Exhibit B” sets forth the standard form of CAWCD Wheeling Contract. Exhibit B is attached hereto and by this reference made a part hereof.

3.21 “Exhibit C” sets forth standard terms and conditions for Reclamation Wheeling Contracts to transport Non-Project Water. Exhibit C is attached hereto and by this reference made a part hereof.

3.22 “Federal Arrangement” means an arrangement relating to use of the CAP System entered into by Reclamation and a separate party under Article 8.17 of the Master Repayment Contract.

3.23 “Firming Agreement” means an agreement between the United States or CAWCD and Long-Term Contractors or lessees of tribal Project Water to set forth the terms and conditions under

which CAWCD will deliver, and the Long-Term Contractor or lessee of tribal Project Water will accept, Firming Water.

3.24 “Firming” means satisfying all or a portion of a Long-Term Contract entitlement that has been reduced due to a Water Shortage.

3.25 “Firming Water” means water available for Firming a Long-Term Contract, as identified in Section 8 of this Agreement.

3.26 “Fixed OM&R Charge(s)” has the same meaning as under the Repayment Stipulation.

3.27 “Interstate Agreements” means contracts entered into in accordance with 43 C.F.R. Part 414, Offstream Storage of Colorado River Water and Development and Release of Intentionally Created Unused Apportionment in the Lower Division States.

3.28 “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.

3.29 “Long-Term Contractor” means an entity holding a Long-Term Contract.

3.30 “Long-Term Storage Credit” means a Long-Term Storage Credit, as defined in A.R.S. § 45-801.02(11).

3.31 “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, dated December 1, 1988, as it may be amended and supplemented.

3.32 “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.

3.33 “Notice of Completion” means the Notice of Completion to be issued by Reclamation at the conclusion of a System Improvement Project.

3.34 “On-River Firming” means agreements entered into with certain M&I users of Colorado River water in Arizona located outside the service area of CAWCD, approved by the Secretary, to provide firming for such water users pursuant to A.R.S. § 45-2457.

3.35 “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.

3.36 “Operational Capability” means the ability of the CAP System to deliver water given the system’s physical and operational characteristics.

3.37 “Project Water” means that water defined as Project Water in the Repayment Stipulation.

3.38 “Projected Additional Operational Capability” means Reclamation’s projection of the additional Operational Capability that is expected to result from a proposed System Improvement Project.

3.39 “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.

3.40 “Pumping Energy Charge(s)” has the same meaning as under the Repayment Stipulation.

3.41 “Reclamation” means the United States Bureau of Reclamation.

3.42 “Reclamation Wheeling Contract” means a contract between Reclamation and a separate entity to deliver Non-Project Water using the CAP System entered into pursuant to Article 8.17 of the Master Repayment Contract.

3.43 “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 ADWR under A.R.S. § 45-834.01.

3.44 “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.

3.45 “Secretary” means the Secretary of the Interior or his duly authorized representative.

3.46 “Segment” means a section of the CAP System between pumping plants, as depicted on the map attached hereto as Exhibit A.

3.47 “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.

3.48 “Transferred Works” means Transferred Works as defined in the Operating Agreement or as may be transferred under subsequent transfer notices.

3.49 “United States” means the United States of America.

3.50 “Upstream” means the direction along the CAP System towards Lake Havasu.

3.51 “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.

3.52 “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.

3.53 “Water Shortage” for the purposes of this Agreement, 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.

3.54 “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:

5.1.1 Delivery of Project Water;

5.1.2 Delivery of Exchange Water;

5.1.3 On-River Firming;

5.1.4 Satisfaction of Interstate Agreements; and

5.1.5 Delivery of Non-Project Water, including Recovered Water, for Firming of CAP Long-Term Contracts.

5.2 For purposes other than those in Subsections 5.1.1, 5.1.2, 5.1.3, 5.1.4, and 5.1.5 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 Reclamation in accordance with Article 8.18 of the Master Repayment Contract. Any specific CAWCD Wheeling Contract must be approved by Reclamation in accordance with Article 8.18 of the Master Repayment Contract and this Agreement.

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, (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 Contracts or Federal Arrangements.

7.2 At a minimum, the terms of any Reclamation Wheeling Contracts will incorporate provisions substantially similar to those in Exhibit C. Reclamation will consult with CAWCD on any variations from the provisions provided in Exhibit C.

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. Reclamation will consult with CAWCD on any variations from the provisions provided 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 (72 Fed. Reg. 54286), 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, (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;  
and

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

9.1.2 Notwithstanding Subsection 3.32 of this Agreement, 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 of this Agreement, 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 the Long-Term Contracts involved in such exchanges and this Agreement;

9.2.1.2 Pursuant to an Exchange Agreement between the non-Federal Long-Term Contractor and 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 of this Agreement, 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 Contracts involved in such exchanges 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, (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. The Annual Operating Plan shall, to the extent reasonable, make maximum use of the CAP System, subject to the provisions of Subsection 10.2.1 of this Agreement, and shall be made available for the Secretary's review.

10.2 In the development of the Annual Operating Plan, CAWCD shall:

10.2.1 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 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.

- 10.2.2 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.
- 10.2.3 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 Subsection 10.2.1 of this Agreement and in accordance with the Scheduling Priorities for CAP System Use set forth in Section 11 of this Agreement.
- 10.2.4 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) deliveries for leases, exchanges or underground storage 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. For Long-Term Contractors that are only able to take delivery of their Project Water entitlement to their service area or reservation by exchange, the approved points

of delivery for any such exchange are deemed to be within the same Segment as the Long-Term Contractor's service area or reservation for purposes of scheduling priority under Section 11 of this Agreement.

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 deliveries for leases, exchanges or underground storage 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 of this Agreement 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 to, and shall not be construed to, contravene the provisions of any Long-Term Contract, or lease pursuant to a Long-Term Contract.

11.5 CAWCD will indemnify the United States from and against all damages resulting from suits, actions, or claims arising out of CAWCD's implementation of this Section of the Agreement in developing the Annual Operating Plan, except to the extent that such suits, actions, or claims challenge the scheduling priorities set forth in this Section of the Agreement.

**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 into the CAP System, including CAWCD or Reclamation, shall be responsible for compliance with the standards of Subsection 12.1 of this Agreement.

12.3 The party introducing the Non-Project Water into the CAP System shall indemnify and hold the United States and CAWCD harmless from and against all claims, damages, costs and other liabilities resulting from that party's introduction of Non-Project Water into the CAP System.

**13. CAP SYSTEM IMPROVEMENT PROJECTS:**

13.1 System Improvement Projects shall be modifications 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, of this Agreement, 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 of this Agreement, 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 of this Agreement, 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 of this Agreement, 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 the eighth priority as defined in the Scheduling Priorities for CAP System Use in Section 11 of this Agreement.

13.6 Reclamation shall perform all necessary environmental compliance for the proposed System Improvement Project. The length of time required to perform such environmental compliance will depend upon the scope of the proposed System Improvement Project.

13.7 CAWCD may proceed with the proposed System Improvement Project after Reclamation completes environmental compliance under Subsection 13.6 of this Agreement and provides CAWCD with written consent for the proposed System Improvement Project.

13.8 Upon completion of a System Improvement Project that received a determination of Projected Additional Operational Capability under Subsection 13.4 of this Agreement, CAWCD shall provide Reclamation with written notice that the System Improvement Project has been completed. The notice shall include CAWCD's estimate of the actual additional Operational Capability resulting from the System Improvement Project, a technical justification for the CAWCD estimate, and the results of such additional analysis as Reclamation determines to be appropriate.

13.9 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.

13.10 Within 180 days of issuance of a Notice of Completion under Subsection 13.9 of this Agreement, Reclamation, in consultation with CAWCD, shall:

13.10.1 Evaluate CAWCD's estimate of the actual associated increase in Operational Capability and the CAWCD technical justification; and

13.10.2 Make a determination of Verified Additional Operational Capability.

13.11 Upon Reclamation's determination of Verified Additional Operational Capability under Subsection 13.10 of this Agreement, 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 the third priority as defined in the Scheduling Priorities for CAP System Use in Section 11 of this Agreement.

13.12 Title to any modifications of the CAP System resulting from a System Improvement Project shall remain with the United States.

13.13 CAWCD will indemnify the United States from and against all damages resulting from suits, actions, or claims arising out of any determination of Projected Additional Operational Capability or Verified Additional Operational Capability by Reclamation under this Agreement.

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

14.1 Long-Term Contractors exchanging Project Water for Non-Project Water pursuant to Section 9 of this Agreement shall pay the Fixed OM&R and Pumping Energy Charge established annually by CAWCD, and applicable capital charges, except any such charges paid by the United States on behalf of the Long-Term Contractor.

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 A Capital Equivalency Charge (as that term is defined in Exhibits B and C to this Agreement) shall be applied to Non-Project Water as set forth in CAWCD Wheeling Contracts, Reclamation Wheeling Contracts or Federal Arrangements. Deliveries of Non-Project Water for Firming are not subject to Capital Equivalency Charges. CAWCD shall deposit Capital Equivalency Charge revenues into the Lower Colorado River Basin Development Fund.

14.4 Firming Agreements authorized under Subsections 8.3 and 8.4 of this Agreement 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 pre-existing agreements between Reclamation and CAWCD (e.g., the Master Repayment Contract, Repayment Stipulation, and the Operating Agreement), those pre-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:**

16.1 **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.

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

16.3 **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.

16.4 **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.

16.5 **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.

16.6 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.

16.7 RULES, REGULATIONS, AND DETERMINATIONS:

16.7.1 The Parties hereto 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.

16.7.2 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.

16.8 EXHIBITS MADE PART OF AGREEMENT: The Exhibits to this Agreement may change during the term of this Agreement, but only with the written agreement of both parties hereto. 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 hereto.

16.9 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 hereto, 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**

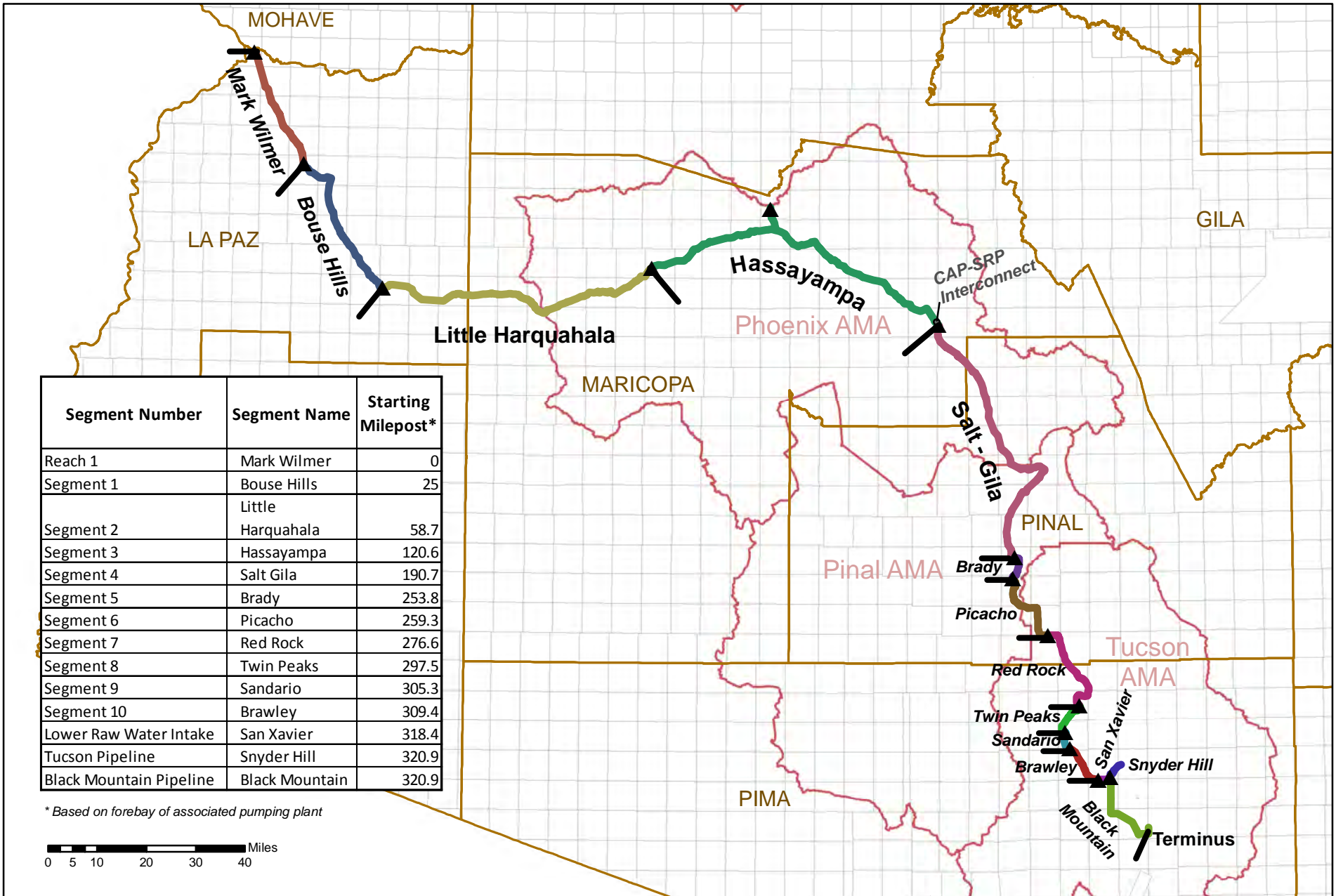
By: \_\_\_\_\_  
Regional Director  
Lower Colorado Region  
Bureau of Reclamation

**CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT**

Approved as to Form:

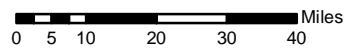
By: \_\_\_\_\_  
Secretary

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



Segment Number	Segment Name	Starting Milepost*
Reach 1	Mark Wilmer	0
Segment 1	Bouse Hills	25
Segment 2	Little Harquahala	58.7
Segment 3	Hassayampa	120.6
Segment 4	Salt Gila	190.7
Segment 5	Brady	253.8
Segment 6	Picacho	259.3
Segment 7	Red Rock	276.6
Segment 8	Twin Peaks	297.5
Segment 9	Sandario	305.3
Segment 10	Brawley	309.4
Lower Raw Water Intake	San Xavier	318.4
Tucson Pipeline	Snyder Hill	320.9
Black Mountain Pipeline	Black Mountain	320.9

\* Based on forebay of associated pumping plant



# Central Arizona Project System Use Agreement: Exhibit A

This map is subject to change and portions may be incorrect or not current. It is the sole responsibility of the user to determine the suitability of this information. No warranty or guarantee of fitness is implied. Central Arizona Project shall have neither liability nor responsibility to any person or entity with respect to any loss or damage in connection with or arising from the information contained

**Date:** December 2016  
**Location:** X:\Maps\Legal\SUA\_Exhibit\_A\_Segments.mxd  
**Projection:** NAD 83, HARN, AZ State Plane, Central Zone, Intl. Feet



**EXHIBIT B**

**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 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 CAP System 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 agreed to in writing by the parties to 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 the 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 Projected 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:**

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. Wheeled Water shall only be transported for the [Entity] in a manner consistent with the final environmental clearances from the United States.

**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 [Entity].

7.2 The [Entity] shall secure from CAWCD all necessary land use permits, as provided under Article 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 CAP System, 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 reimbursed or given credit for the appropriate proportion of Fixed OM&R Charges and Pumping Energy charges prior to the date of the entities next payment.

**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 standards established by CAWCD and the United States under Subsection 12.1 of the CAP System Use Agreement, which water quality standards 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 and state 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 standards established by CAWCD and the United States and/or if such transportation is likely to result in a violation of then existing federal and state 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 claims, damages, costs and other liabilities resulting from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System, whether or not asserted by a third party, and, at CAWCD's election, defend CAWCD against any such losses, claims, damages or other liabilities asserted by a third party.

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

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

10.7.1 The payment of claims, damages, costs 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 claims, damages, costs and other liabilities asserted by a third party 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 Subsection 10.6 of this Contract.

**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 five percent (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 five percent (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 10.2.1 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, after applicable losses, as shown in Exhibit 2.6 hereto. If requested by the [Entity], CAWCD may, at its sole discretion, transport more than eleven percent (11%) of the Wheeled Water in a month only after satisfying all Water Delivery Schedules with the same CAP System scheduling priority as set forth in Section 11 of the CAP System Use Agreement.

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. 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 Subsections 14.1.1 and 14.1.2 of this Contract, each Year the [Entity] shall make payment to CAWCD in equal semiannual installments of a Capital Equivalency Charge. Until fulfillment of CAWCD's repayment obligation, 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, except that the amount of the Capital Equivalency Charge will be reduced for each acre-foot of Wheeled Water that the [Entity] schedules to be delivered for Firming in that Year. CAWCD and the United States will coordinate and consult regarding any appropriate charge for transportation of Wheeled Water following fulfillment of CAWCD's repayment obligation in addition to the charges set forth under Subsections 14.1.1 and 14.1.2 of this Contract. 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 Lower Colorado River Basin Development Fund.

14.2 The payment of all water transportation charges when due as stipulated in Subsections 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 one-half percent (0.5%) 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 express 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, fire, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities and restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome.

**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.

**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

**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 10.2 (Possible): Water Quality Monitoring and Reporting Plan

## **EXHIBIT C**

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

#### **1. DEFINITIONS:**

Definitions included in the CAP System Use Agreement between the United States and the Central Arizona Water Conservation District dated [ ] (“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-feet per year of Wheeled Water that may be transported through the CAP System under this Contract, as shown in Exhibit 1.5 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 1.2 hereto.

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

1.4 Point(s) of Delivery: The location(s) designated in Exhibit 1.4, 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 1.5 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 agreed to in writing by the parties to this Contract.

#### **3. ENVIRONMENTAL CLEARANCE:**

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 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 Article 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 CAP System, 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. 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.

**5. PLACE OF USE:**

Wheeled Water shall be used within 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 reimbursed or given credit for the appropriate proportion of Fixed OM&R Charges and Pumping Energy Charges prior to the date of the entities next payment.

## **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 standards established by CAWCD and the United States under Subsection 12.1 of the CAP System Use Agreement, which water quality standards 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 and state 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 standards established by CAWCD and the United States and/or if such transportation



is likely to result in a violation of then existing federal and state 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 claims, damages, costs and other liabilities resulting from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System, whether or not asserted by a third party, and, at CAWCD's election, defend CAWCD against any such losses, claims, damages or other liabilities asserted by a third party.

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

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

7.7.1 The payment of claims, damages, costs 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 claims, damages, costs and other liabilities asserted by a third party 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 Subsection 7.6 of this Contract.

## **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 five percent (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 five percent (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 [Entity's] Water Delivery 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 10.2.1 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 applicable losses.

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 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 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. 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 Subsections 10.1.1 and 10.1.2 of this Contract, each Year the [Entity] shall make payment to CAWCD in equal semiannual installments of a Capital Equivalency Charge. Until fulfillment of CAWCD's repayment obligation 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, except that the amount of the Capital Equivalency Charge will be reduced for each acre-foot of Wheeled Water that the [Entity] schedules to be delivered for Firming in that Year. CAWCD and the United States will coordinate and consult regarding any appropriate charge for transportation of Wheeled Water following fulfillment of CAWCD's repayment obligation in addition to the charges set forth under Subsections 10.1.1 and 10.1.2. 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 Lower Colorado River Basin Development Fund.

10.2 The payment of all water transportation charges when due as stipulated in Subsections 10.1.1, 10.1.2, and 10.1.3 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 one-half percent (0.5%) 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 Wheeled Water pursuant to this Contract shall be subject to the CAP System Use Scheduling Priorities as set forth in the CAP System Use Agreement.