

Agenda Number 5.

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MEETING DATE: May 4, 2017

AGENDA ITEM: Discussion and Consideration of Action to Approve on Behalf of CAGR D a Water Right Lease Agreement between the Town of Quartzsite and Central Arizona Water Conservation District

RECOMMENDATION: Staff recommends that the Board approve the Water Right Lease Agreement

FINANCIAL IMPLICATIONS:

Impact on Budget:

Budget Year	CAGR D Budget		
	Funds Requested	Funds Included in the Budget	(Over) / Under Budget
2018	\$ 1,849,000	\$ 0	\$ 0

These funds will be requested in the 2018-2019 biennial budget.

Additional spending authority requested: None.

Impact on CAGR D Reserves: CAGR D's initial 25-year lease payment will be paid from the Water Rights and Infrastructure account reserves. No impact to CAWCD Reserves.

Impact on CAGR D Rates: None. The CAGR D Water Rights and Infrastructure rate component is set appropriately to accommodate expenses associated with this Lease Agreement. No impact to CAWCD Rates.

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

CAWCD Board of Directors 2016 Strategic Plan

- Replenishment: Obtain Sufficient Water Supplies to Meet Long-Term Replenishment Obligations

PREVIOUS BOARD ACTION/ACTIVITY:

The Board was briefed in Executive Session on August 4, 2016, January 5, 2017, March 2, 2017 and April 6, 2017.

ISSUE SUMMARY/DESCRIPTION:

CAGR and the Town of Quartzsite ("Quartzsite") have negotiated the terms of an agreement to lease Quartzsite's 1,070 acre-foot, fourth priority Colorado River entitlement. The terms of the agreement are reflected in the proposed Water Right Lease Agreement between the Town of Quartzsite and CAWCD ("Lease Agreement"), which is attached to this brief.

Quartzsite has about 4,000 full-time residents who rely solely on groundwater. Because Quartzsite is located approximately 20 miles east of the Colorado River, the high cost to construct a pipeline to the town has so far made development and use of this Colorado River water entitlement unaffordable. Quartzsite needs capital to fund improvements to its groundwater system for redundancy and to meet future demands. Quartzsite's annual Water Consumer Confidence Reports indicate that the groundwater supply is safe and meets all federal and state requirements. In 2015, various representatives from the town began contacting CAWCD to discuss options for Quartzsite to utilize its entitlement.

Since Quartzsite has not previously utilized its Colorado River entitlement, the physical water has been diverted by CAWCD each year as part of the "excess" pool. CAGR has long relied upon the excess pool to meet its replenishment obligations. Lease and transfer of the Quartzsite entitlement to CAGR does not result in any physical change in the diversion at Mark Wilmer pumping plant or use of this water supply in central Arizona. However, the lease and transfer will improve the reliability of the supply for CAGR and provide much needed funding to Quartzsite for improvements to its groundwater system.

The primary terms of the Lease Agreement are as follows:

- 1. Effective Date:** The Lease Agreement will take effect and become enforceable between the parties following approval by Quartzsite's Town Council and the CAWCD Board of Directors and execution by both parties ("Initial Effective Date"). However, the trigger for the commencement of the lease term and obligation of CAWCD to pay the lease consideration will not occur until all regulatory approvals for the lease of the Quartzsite entitlement and transportation of that water to the CAWCD Service Area have been obtained ("Final Effective Date")
- 2. Regulatory Approval Process:** The lease of Quartzsite's Colorado River entitlement is subject to regulatory oversight, including review and recommendation by the Arizona Department of Water Resources ("ADWR") and approval by the United States Bureau of Reclamation ("Reclamation"). CAWCD will also need to comply with the requirements of the CAP System Use Agreement to secure any authorizations and agreements needed to transport the leased water in the CAP System. The Lease Agreement requires Quartzsite and CAWCD to initiate the regulatory approval process within 30 days of the Initial Effective Date.
- 3. Volume of Lease:** The proposed Lease Agreement provides for a lease of the entire 1,070 acre-feet of Quartzsite's fourth priority Colorado River entitlement to CAWCD. However, the lease must be approved by Reclamation following a review and recommendation by ADWR. CAWCD will only be required to lease (and pay for) the specific amount of the Quartzsite entitlement that Reclamation approves for lease.
- 4. Lease Term:** The Lease Agreement provides for two successive 25-year terms with an option for either party to elect not to renew the lease for the second 25-year term. The "Initial Lease Term" will commence on January 1 of the year following the Final Effective Date (i.e., the year after all approvals needed for CAWCD to start diverting and using the

water have been obtained). Unless one of the parties notifies the other party of its election not to renew the lease 120 days before the end of the Initial Lease Term, the lease will automatically renew for another 25-year term ("Extended Lease Term").

5. **Consideration**: The Lease Agreement provides for CAWCD to make the following payments to Quartzsite. CAWCD's obligation to make any payments to Quartzsite is contingent on all approvals being obtained to allow CAWCD to begin diverting, transporting and using the leased water.
 - a. **Lease Agreement Payment**: CAWCD will pay Quartzsite \$30,000.00 no later than January 30 of the first year of the Initial Lease Term.
 - b. **Initial Lease Term Payment**: For each acre-foot of fourth priority Colorado River entitlement that the Secretary approves for lease from Quartzsite to CAWCD for the Initial Lease Term, CAWCD will pay \$1,700 to Quartzsite. CAWCD is required to make the Initial Lease Term Payment no earlier than July 1 and no later than July 15 of the first Year of the Initial Lease Term. The reason for timing of this payment is to ensure that the payment is received by Quartzsite at the beginning of its fiscal year.
 - c. **Extended Lease Term Payment**: For each acre-foot of fourth priority Colorado River entitlement that the Secretary approves for lease from Quartzsite to CAWCD for the second 25 year term, CAWCD will make a one-time payment of \$2,470 to Quartzsite. CAWCD is required to make the Extended Lease Term Payment no later than January 1 of the first Year of the Extended Lease Term.

6. **Right of First Refusal**: The Lease Agreement provides CAWCD with a Right of First Refusal for Quartzsite's fourth priority Colorado River entitlement. Before leasing, selling, assigning, and/or conveying its fourth priority Colorado River entitlement in whole or in part, to a third party, Quartzite must offer the entitlement (or portion thereof) to CAWCD for purchase on the same terms and conditions offered to the third party.

SUGGESTED MOTION: I move that the Board approve the Water Right Lease Agreement between the Town of Quartzsite and Central Arizona Water Conservation District and authorize its execution on behalf of CAWCD in substantially the same form in which it was presented today.

Attachment.

**WATER RIGHT LEASE AGREEMENT BETWEEN THE TOWN OF QUARTZSITE
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

This Water Right Lease Agreement (“Lease Agreement”) is made and entered into this ____ day of _____, 2017, between the TOWN OF QUARTZSITE, an Arizona municipal corporation (“Quartzsite”), and the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a multi-county water conservation district formed in accordance with the laws of the State of Arizona (“CAWCD”). Quartzsite and CAWCD are sometimes referred to in this Lease Agreement individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. WHEREAS, Quartzsite has an entitlement under Contract No. 7-07-30-W0353 with the United States Department of the Interior, Bureau of Reclamation dated January 28, 1999, as supplemented and amended by Amendment No. 1 dated October 20, 2015 (“Quartzsite Contract”) to divert and consumptively use up to 1,070 acre-feet per year of fourth priority Colorado River water for use within the Quartzsite Contract Service Area.
- B. WHEREAS, Quartzsite does not currently have the diversion or delivery infrastructure in place to directly utilize the Colorado River water available to it under the Quartzsite Contract.
- C. WHEREAS, Section 5.1 of the Quartzsite Contract provides that the United States may terminate the Quartzsite Contract if Quartzsite does not complete its water delivery system and order, divert, transport, and beneficially use Mainstream Water within the Quartzsite Contract Service Area by January 28, 2029, unless otherwise determined by Reclamation in writing, after consultation with ADWR.
- D. WHEREAS, as provided in Section 5.2 of the Quartzsite Contract, Quartzsite submitted a 15-year implementation plan to Reclamation and ADWR in December 2014 that describes the ways in which Quartzsite would utilize its Colorado River entitlement.
- E. WHEREAS, Quartzsite’s 15-year implementation plan evaluates different alternatives for Quartzsite’s utilization of its Colorado River entitlement, including by lease to entities outside of the Quartzsite Contract Service Area.
- F. WHEREAS, Section 19 of the Quartzsite Contract contemplates that Quartzsite’s entitlement to Colorado River water may be leased to another person or entity with prior written approval of Reclamation.
- G. WHEREAS, subject to the terms and conditions in this Lease Agreement, Quartzsite desires to lease to CAWCD the entire volume of its Colorado River water entitlement under the Quartzsite Contract, and CAWCD desires to lease from Quartzsite the entire volume of Quartzsite’s Colorado River water entitlement and to transport that water to the CAWCD Service Area using the CAP System for use by CAWCD in fulfilling its replenishment obligations under Title 48, Chapter 22 of the Arizona Revised Statutes.

H. WHEREAS, the consideration to be paid by CAWCD to Quartzsite under this Lease Agreement will provide Quartzsite with needed funding for improvements to its groundwater production facilities to allow Quartzsite to better serve water demands within its service area.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, the mutual promises contained herein, and the payments to be made hereunder, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

The following terms, when capitalized, have the following meanings:

- 1.1. “ADWR” means the Arizona Department of Water Resources or its successor agency.
- 1.2. “CAP” or “Central Arizona Project” means the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. §§ 1521 et seq.).
- 1.3. “CAP Repayment Contract” means: (1) the contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.
- 1.4. “CAP Service Area” or “District” means the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties, or portions thereof, that may hereafter become part of the District.
- 1.5. “CAP System” means: (1) the Mark Wilmer Pumping Plant, (2) the Hayden Rhodes Aqueduct, (3) the Fannin-McFarland Aqueduct, (4) the Tucson Aqueduct, (5) the New Waddell Dam; and (6) any pumping plant or appurtenant works of a feature described in (1) through (5), and (7) any extensions of, additions to, or replacements for the features described in (1) through (6).
- 1.6. “CAP System Use Agreement” means the Central Arizona Project System Use Agreement between the United States and the Central Arizona Water Conservation District dated February 2, 2017.
- 1.7. “CAWCD” or “Central Arizona Water Conservation District” means the multi-county water conservation district formed in accordance with the laws of the State of Arizona that is the contractor under the CAP Repayment Contract.
- 1.8. “CAWCD Rejection” has the meaning provided in Subarticle 4.1 of this Lease Agreement.

- 1.9. “Extended Lease Term” has the meaning provided in Subarticle 2.3.2 of this Lease Agreement.
- 1.10. “Final Effective Date” has the meaning provided in Subarticle 2.2.2 of this Lease Agreement.
- 1.11. “Initial Effective Date” has the meaning provided in Subarticle 2.2.1 of this Lease Agreement.
- 1.12. “Initial Lease Term” has the meaning provided in Subarticle 2.3.1 of this Lease Agreement.
- 1.13. “Leased Water Right” means the volume of the Quartzsite Entitlement that the Secretary approves for lease to CAWCD and diversion by CAWCD for transportation to the CAWCD Service Area.
- 1.14. “Mainstream Water” has the same meaning as under the Quartzsite Contract.
- 1.15. “Purchase Price Credit” has the meaning provided in Subarticle 4.3 of this Lease Agreement.
- 1.16. “Quartzsite” means the Town of Quartzsite, an Arizona municipal corporation.
- 1.17. “Quartzsite Contract” means Contract No. 7-07-30-W0353 between the United States Department of the Interior, Bureau of Reclamation, and Quartzsite, dated January 28, 1999, as supplemented and amended by Amendment No. 1 dated October 20, 2015. A copy of the Quartzsite Contract is attached to this Lease Agreement as **Exhibit A**.
- 1.18. “Quartzsite Contract Service Area” has the same meaning as under the Quartzsite Contract.
- 1.19. “Quartzsite Entitlement” means Quartzsite’s entitlement to 1,070 acre-feet per year of fourth priority Colorado River water per year under the Quartzsite Contract
- 1.20. “OM&R” means the care, operation, maintenance, and replacement of the CAP System or any part thereof.
- 1.21. “Reclamation” means the United States Bureau of Reclamation, a bureau of the United States Department of the Interior.
- 1.22. “Regulatory Approval” or “Regulatory Approvals” has the meaning provided in Subarticle 3.1.1 of this Lease Agreement.
- 1.23. “ROFR Terms and Conditions” has the meaning provided in Subarticle 4.1 of this Lease Agreement.
- 1.24. “Secretary” means the Secretary of the Interior of the United States or his duly authorized

representative.

- 1.25. “Section 5 Contract” means a contract issued by the Secretary pursuant to Section 5 of the Boulder Canyon Project Act of 1928, Pub. L. 70-642, for storage of water in Lake Mead and for the delivery of Mainstream Water.
- 1.26. “Year” means a calendar year.

ARTICLE 2 LEASE OF WATER

- 2.1 Lease of Colorado River Water Entitlement. For the duration of the Initial Lease Term and, if applicable, the Extended Lease Term, Quartzsite agrees to lease to CAWCD, and CAWCD agrees to lease from Quartzsite, the entire volume of the Quartzsite Entitlement subject to: (a) the terms and conditions of this Lease Agreement; (b) the existing terms and conditions of the Quartzsite Contract that are not inconsistent with this Lease Agreement; (c) recommendation of the Lease Agreement by ADWR and (d) approval by the Secretary. The specific volume of the Quartzsite Entitlement leased to CAWCD under this Lease Agreement is the volume of the Quartzsite Entitlement that the Secretary approves for lease to CAWCD and diversion by CAWCD for transportation to the CAWCD Service Area during the Initial Lease Term and the Extended Lease Term (the “Leased Water Right”). Neither this Lease Agreement nor CAWCD are subject to any amendment to the Quartzsite Contract subsequent to the Initial Effective Date of this Lease Agreement that adversely affect this Lease Agreement unless CAWCD agrees to such amended terms in writing.
- 2.2 Effective Date.
 - 2.2.1 Initial Effective Date. This Lease Agreement shall become effective and enforceable between the Parties on the date that it has been: (a) approved by both the town council of Quartzsite and the CAWCD board of directors; and (b) executed by both Quartzsite and CAWCD (the “Initial Effective Date”).
 - 2.2.2 Final Effective Date. The “Final Effective Date” of this Lease Agreement is the date on which all reviews, recommendations, approvals and agreements described in Subarticle 3.1.1 of this Lease Agreement have been obtained by Quartzsite and/or CAWCD, as applicable.
- 2.3 Lease Term.
 - 2.3.1 Initial Lease Term. The initial term of this Lease Agreement during which CAWCD may divert Colorado River water pursuant to the Leased Water Right is for a period of 25 years commencing on January 1 of the Year following the Year in which Final Effective Date occurs. The Initial Lease Term will expire at 11:59 p.m. Arizona time on December 31 of the twenty-fifth (25th) Year following the commencement of the Initial Lease Term.

2.3.2 Extended Lease Term. Unless either Party notifies the other in writing at least 120 days before the expiration of the Initial Lease Term that it does not wish to renew the Lease Agreement, term of this Lease Agreement will automatically renew for one additional 25-year term (the “Extended Lease Term”). The Extended Lease Term will commence on January 1 of the Year following expiration of the Initial Lease Term and expire at 11:59 p.m. Arizona time on December 31 of the twenty-fifth (25th) Year following the commencement of the Extended Lease Term.

2.4 Consideration.

2.4.1 Lease Agreement Payment. CAWCD shall make a one-time payment of \$30,000.00 to Quartzsite no later than January 30 of the first Year of the Initial Lease Term.

2.4.2 Lease Term Payments. In addition to the one-time payment under Subarticle 2.4.1 of this Lease Agreement, CAWCD will also make the following payments to Quartzsite:

2.4.2.1 Initial Lease Term Payment: For each acre-foot of the Quartzsite Entitlement that the Secretary approves for lease from Quartzsite to CAWCD and diversion by CAWCD for transportation to the CAWCD Service Area during the Initial Lease Term, CAWCD will make a one-time cash payment of \$1,700.00 to Quartzsite (the “Initial Lease Term Payment”). CAWCD shall make the Initial Lease Term Payment no earlier than July 1 and no later than July 15 of the first Year of the Initial Lease Term. [For example, if the Secretary approves the lease of the full Quartzsite Entitlement to 1,070 acre-feet per year of fourth priority Colorado River water to CAWCD for the Initial Lease Term, the amount of the Initial Lease Term Payment will be \$1,819,000.00 (i.e., \$1,700.00/acre-foot x 1,070 acre-feet = \$1,819,000.00).]

2.4.2.2 Extended Lease Term Payment: For each acre-foot of the Quartzsite Entitlement that the Secretary approves for lease from Quartzsite to CAWCD and diversion by CAWCD for transportation to the CAWCD Service Area during the Extended Lease Term, CAWCD will make a one-time cash payment of \$2,470.00 to Quartzsite (the “Extended Lease Term Payment”). Unless either Party provides written notification that it does not wish to renew the Lease Agreement pursuant to Subarticle 2.2.2 of this Lease Agreement, CAWCD shall make the Extended Lease Term Payment no later than January 1 of the first Year of the Extended Lease Term.

2.5 Diversion of Water. CAWCD may begin diverting Colorado River water pursuant to the Leased Water Right during the Initial Lease Term following commencement of the Initial Lease Term, payment of the payment required under Subarticle 2.4.1 of this Lease Agreement and submittal of a water order by CAWCD to Reclamation; provided, however,

CAWCD may not divert more than 500 acre-feet of Colorado River water pursuant to the Leased Water Right until CAWCD has paid Quartzsite the Initial Lease Term Payment. CAWCD may begin diverting Colorado River water pursuant to the Leased Water Right during the Extended Lease Term following commencement of the Extended Lease Term, payment of the payment required under Subarticle 2.4.2.2 of this Lease Agreement and submittal of a water order by CAWCD to Reclamation. Subject to the requirements of this Subarticle 2.5 and any conditions imposed under the approvals obtained from Reclamation to effectuate this Lease Agreement, CAWCD may annually divert from the mainstream of the Colorado River the entire volume of the Leased Water Right for transportation in the CAP System to the CAWCD Service Area.

- 2.6 Use of Water. CAWCD may use Colorado River water diverted pursuant to the Leased Water Right for any purpose that is consistent with this Lease Agreement and applicable Arizona and federal law to fulfill its groundwater replenishment responsibilities, including but not limited to exchanges of that water for other types of water and groundwater recharge as that term is defined in the CAP Repayment Contract.
- 2.7 Quartzsite Contract Costs: CAWCD shall reimburse Quartzsite for any costs incurred by Quartzsite under Section 15 of the Quartzsite Contract relating to this Lease Agreement from the Initial Effective Date through the end of the Initial Lease Term and, if applicable, the Extended Lease Term.
- 2.8 Quartzsite Covenants. Quartzsite covenants and agrees from the Initial Effective Date through the end of the Initial Lease Term and, if applicable, the Extended Lease Term as follows:
 - 2.8.1 Quartzsite will observe and perform all obligations imposed on Quartzsite under the Quartzsite Contract that are not assumed by CAWCD under a new Section 5 Contract issued by Reclamation to CAWCD for the Leased Water Right so that CAWCD's rights and obligations under this Lease Agreement are not impaired in any way.
 - 2.8.2 Quartzsite will cooperate with CAWCD to amend the Quartzsite Contract and agrees to amend the Quartzsite Contract, as necessary, to allow lease of the entire Quartzsite Entitlement to CAWCD for the Initial Lease Term and the Extended Lease Term. This provision shall not obligate Quartzsite to accept or support amendments to the Quartzsite Contract that would materially lessen Quartzsite's rights or enlarge Quartzsite's obligations under the Quartzsite Contract in a manner inconsistent with this Lease Agreement or that would impair Quartzsite's rights under this Lease Agreement in any way.
 - 2.8.3 Unless required by law or court order, Quartzsite will not alter or modify the terms of the Quartzsite Contract in a way that would impair CAWCD's rights under this Lease Agreement in any way or exercise any right or perform any obligation under the Quartzsite Contract in a manner that would interfere with or change the rights and obligations of either Party under this Lease Agreement without the prior written

consent of CAWCD.

- 2.8.4 Quartzsite will not terminate or cancel the Quartzsite Contract.
- 2.8.5 Quartzsite will not lease, sell, assign, transfer, convey or permit the lease, sale, assignment, transfer or conveyance of the Quartzsite Contract or Quartzsite Entitlement so as to cause a termination of, interference with, modification of, or impairment of CAWCD's rights and obligations under this Lease Agreement.
- 2.8.6 Quartzsite will not use, order, or divert any portion of the Quartzsite Entitlement so as to cause a termination of, interference with, modification of, or impairment of CAWCD's rights and obligations under this Lease Agreement.
- 2.8.7 Quartzsite will not to take any actions to protest or otherwise prevent CAWCD's diversion of the Leased Water Right and transportation of the Leased Water Right to the CAWCD Service Area.

ARTICLE 3
REGULATORY APPROVAL PROCESS

3.1 Regulatory Approvals.

- 3.1.1 Unless otherwise agreed to in writing by the Parties, the Final Effective Date is conditioned on Quartzsite and/or CAWCD, as applicable, obtaining all of the following regulatory reviews, recommendations, authorizations, approvals and agreements ("Regulatory Approval" or "Regulatory Approvals"):
 - 3.1.1.1 ADWR review and recommendation to Reclamation regarding Quartzsite's lease of the Quartzsite Entitlement to CAWCD as described in this Lease Agreement pursuant to A.R.S. § 45-107;
 - 3.1.1.2 Approval by the Secretary of Quartzsite's lease of the Quartzsite Entitlement to CAWCD as described in this Lease Agreement;
 - 3.1.1.3 Approval by the Secretary and Quartzsite of any amendments to the Quartzsite Contract necessary to allow the lease of the Quartzsite Entitlement to CAWCD as described in this Lease Agreement;
 - 3.1.1.4 Approval by the Secretary of a new Section 5 Contract between the United States and CAWCD allowing CAWCD diversion and use of Colorado Water pursuant to the Leased Water Right consistent with the terms of this Lease Agreement;
 - 3.1.1.5 Authorization from the Secretary and the CAWCD board of directors and execution of any agreements pursuant to the CAP System Use Agreement necessary for CAWCD to transport Colorado River water diverted by

CAWCD pursuant to the Leased Water Right in the CAP System to the CAWCD Service Area for the uses described in Subarticle 2.6 of this Lease Agreement.

3.1.1.6 Any other Regulatory Approvals necessary to allow for CAWCD's diversion of Colorado River water pursuant to the Leased Water Right and transportation of that water to the CAWCD Service Area for the uses described in Subarticle 2.6 of this Lease Agreement.

3.1.2 The Regulatory Approvals described in Subarticles 3.1.1.1 through 3.1.1.3 will be deemed to be obtained for purposes of satisfying the condition to trigger the Final Effective Date only if those Regulatory Approvals are provided on terms and conditions acceptable to both Parties. If either Party determines that the proposed terms and conditions of one or more of the Regulatory Approvals described in Subarticles 3.1.1.1 through 3.1.1.3 are unacceptable, that Party shall provide the other Party with written notice describing the objecting Party's objections to the terms and conditions no later than 30 days after issuance of the applicable Regulatory Approval(s). Upon either Party providing such notice, the Parties agree to cooperate to resolve the objecting Party's objections and obtain the applicable Regulatory Approval(s) on terms and conditions acceptable to both Parties, subject to the Parties' rights to terminate this Lease Agreement under Article 6 of this Lease Agreement.

3.1.3 The Regulatory Approvals described in Subarticles 3.1.1.4 through 3.1.1.6 will only be deemed to be obtained for purposes of satisfying the condition to trigger the Final Effective Date if those Regulatory Approvals are provided on terms and conditions acceptable to CAWCD, as determined by CAWCD in its sole discretion. If CAWCD determines that the proposed terms and conditions of one or more of the Regulatory Approvals described in Subarticles 3.1.1.4 through 3.1.1.6 are unacceptable, it shall promptly provide Quartzsite with written notice describing CAWCD's objections to the terms and conditions no later than 30 days after issuance of the applicable Regulatory Approval(s). CAWCD agrees to cooperate with Quartzsite to resolve CAWCD's objection and obtain the applicable Regulatory Approval(s) on terms and conditions acceptable to both Parties, subject to CAWCD's' rights to terminate this Lease Agreement under Article 6 of this Lease Agreement.

3.2 Initiation of Regulatory Approval Process: Within 30 days of the Initial Effective Date, Quartzsite and CAWCD will initiate the process to obtain the regulatory approvals described in Subarticle 3.1 of this Lease Agreement. The Parties agree to cooperate and to make all reasonable efforts to expeditiously and collaboratively obtain the regulatory approvals described in Subarticle 3.1 of this Lease Agreement.

3.3 Costs of Permits and Approvals. CAWCD shall be responsible for and shall pay any and all fees and other costs charged by Reclamation, ADWR, CAWCD and/or other governmental entities (excluding Quartzsite) to obtain the regulatory approvals described

in Subarticle 3.1 of this Lease Agreement.

ARTICLE 4
RIGHT OF FIRST REFUSAL

- 4.1 Right of First Refusal. Before entering into any agreement for sale, lease, transfer or conveyance of the Quartzsite Entitlement or the Quartzsite Contract, in whole or in part, to a third party, Quartzsite must offer, in writing, the Quartzsite Entitlement or the Quartzsite Contract, or the same portion thereof, to CAWCD on the same terms and conditions as are offered by or to the third party, as reflected in a draft agreement or other document accompanying the offer (“ROFR Terms and Conditions”). CAWCD will have 30 days from the date that CAWCD receives said offer from Quartzsite to notify Quartzsite in writing of its decision to accept or reject the offer, subject to approval by the CAWCD Board. If notice of acceptance is timely provided, CAWCD will then have 90 days following the date such notice is tendered to secure the approval of the CAWCD Board. If the CAWCD fails to provide notice of acceptance or to secure CAWCD Board approval within the required time period (“CAWCD Rejection”), Quartzsite shall be free to lease, sell, transfer or convey the Quartzsite Entitlement or the same portion thereof on the same ROFR Terms and Conditions offered to CAWCD for a period of 18 months following the CAWCD Rejection. Unless otherwise agreed to in writing by the Parties, if Quartzsite does not close the transaction to lease, sell, transfer or convey the Quartzsite Entitlement or applicable portion thereof on the same ROFR Terms and Conditions offered to CAWCD within the 18-month period, Quartzsite’s right to lease, sell, transfer or convey the Quartzsite Entitlement shall expire and the procedures in this Subarticle 4.1 shall again be applicable. The provisions of this Subarticle 4.1 shall survive expiration or termination of this Lease Agreement for a period of 12 years.
- 4.2 Lease or Sale to Third Party Subject to Lease Agreement. If, after complying with the procedures in Subarticle 4.1, Quartzsite is permitted to and does proceed to lease, sell, transfer or convey the Quartzsite Entitlement or a portion thereof to a third party, the lease, sale, transfer or conveyance documents shall expressly provide that the transaction is made subject to this Lease Agreement and will not affect CAWCD’s rights and obligations under this Lease Agreement.
- 4.3 Refund or Credit of Lease Payments. If during the Lease Term Quartzsite agrees to sell and CAWCD agrees to purchase the Quartzsite Entitlement or a portion thereof, CAWCD shall be given a credit towards the purchase price determined under the following formula:

Purchase Price Credit = [((price per acre-foot (for Initial Lease Term Payment or Extended Lease Term Payment, as applicable) x number of acre-feet of Quartzsite Entitlement being purchased) / 25 Years)] x number of full Years remaining in the Initial Lease Term or Extended Lease Term, as applicable, as of the date that the purchase transaction has closed and is fully effective]. For example, if CAWCD were to purchase the entire 1,070 acre-feet of the Quartzsite Entitlement and secure all regulatory approvals so as to make the purchase fully effective as of December 31st of the 15th

Year of the Initial Lease Term (i.e., with 10 full Years remaining in the Initial Lease Term), the Purchase Price Credit would be \$727,600.00 [(((\$1,700/acre-foot x 1,070 acre-feet) / 25 Years) x 10 Years)].

The Purchase Price Credit shall be applied at the time of closing the transaction for CAWCD's purchase the Quartzsite Entitlement or portion thereof. The Purchase Price Credit shall not be considered in determining whether CAWCD accepts or rejects an offer to purchase the Quartzsite Entitlement or a portion thereof on the same terms and conditions as a third party under Subarticle 4.1 of this Lease Agreement.

ARTICLE 5 DEFAULT AND REMEDIES

- 5.1 Default for Failure to Pay. Any failure by CAWCD to make the payments specified in Subarticle 2.4 of this Lease Agreement within 30 days after any such payment becomes due shall constitute a default of CAWCD's obligations under this Lease Agreement ("Non-Payment Default").
- 5.2 Notice of Default for Failure to Pay. In the event of Non-Payment Default, Quartzsite shall provide written notice to CAWCD specifying the default and demanding that the default be cured within 30 days from CAWCD's receipt of the notice ("Notice of Default").
- 5.3 Remedies for Failure to Pay. If CAWCD fails to cure a Non-Payment Default within 30 days of CAWCD's receipt of a Notice of Default, Quartzsite may elect, in its sole discretion, to either terminate this Lease Agreement or provide CAWCD with additional time to pay the amounts due before exercising its right to terminate this Lease Agreement. If Quartzsite terminates this Lease Agreement for a Non-Payment Default, Quartzsite shall not be entitled to any other remedy other than termination of this Lease Agreement; provided, however, if Quartzsite terminates this Lease Agreement for non-payment of the payment required under Subarticle 2.4.1 of this Lease Agreement, Quartzsite shall also be entitled to a judgment for the amount of that payment and interest accrued at a rate of ten percent (10%) per annum from the due date for that payment.
- 5.4 Non-Monetary Defaults. The failure of either Party to perform any term, covenant, condition of this Lease Agreement, other than CAWCD's obligation to make certain payments under Subarticle 2.4 of this Lease Agreement, shall constitute an event of default under this Lease Agreement if that failure to perform is not cured within and/or continues for 30 days following receipt of written notice from the other Party.
- 5.5 Remedies for Non-Monetary Defaults. A non-monetary event of default under Subarticle 5.4 is not a basis for termination of this Lease Agreement. If a non-monetary event of default occurs under Subarticle 5.4 of this Lease Agreement, the non-defaulting Party may pursue any remedies available under law or equity other than termination or rescission of this Lease Agreement, including specific performance.

ARTICLE 6
TERMINATION

- 6.1 Termination. This Lease Agreement shall terminate upon the occurrence of the earlier of the following events:
- 6.1.1 Upon written notice of termination by either party if the Final Effective Date does not occur within 18 months of the Initial Effective Date, or such alternative time as the Parties may agree upon in writing;
 - 6.1.2 The end of the Initial Lease Term if either Party provides not less than 120 days prior written notice of its election not to renew the Lease Agreement for the Extended Lease Term in accordance with Subarticle 2.3.3 of this Lease Agreement (For example, if the Initial Lease Term commences January 1, 2018, the Initial Lease Term runs through December 31, 2042 and written notice of either Parties' election to terminate must be provided no later than September 2, 2042);
 - 6.1.3 The end of the Extended Lease Term; or
 - 6.1.4 The sale of the entire Quartzsite Entitlement to CAWCD.
- 6.2 Termination by CAWCD. Notwithstanding any other provision of this Lease Agreement, in the event CAWCD, in its sole discretion, determines it is unlikely that all regulatory approvals needed for the Final Effective Date to occur will be secured upon terms and conditions acceptable to CAWCD, CAWCD may terminate this Lease Agreement with 60 days prior written notice to Quartzsite without any penalty whatsoever; provided, however, CAWCD shall, if requested in writing by Quartzsite, continue reasonable efforts to secure the necessary regulatory approvals upon acceptable terms and conditions until the expiration of the 60 day period.

ARTICLE 7
GENERAL PROVISIONS

- 7.1 Further Acts. The Parties agree to perform any additional acts and execute any additional documents reasonably necessary to effectuate the purposes of this Lease Agreement. Quartzsite shall allocate sufficient staff time to allow performance of any additional acts and review and execution of any additional documents required under this Subarticle 7.1; provided, however, nothing in this Subarticle 7.1 shall require Quartzsite to expend, or to budget the expenditure of, any monies in furtherance those activities and any such expenditures shall be in the sole discretion of Quartzsite.
- 7.2 Controlling Law and Venue. This Lease Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by applicable Arizona and federal law. Any action to resolve any dispute regarding this Lease Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.

- 7.3 Interpretation. The Parties agree that neither Party shall be deemed the drafter of this Lease Agreement and, in the event this Lease Agreement is ever construed by a court of law or equity, such court shall not construe this Lease Agreement or any provision hereof against either Party as drafter of this Lease Agreement.
- 7.4 Captions. All captions, titles, or headings in this Lease Agreement are used for the purpose of reference and convenience only and are not intended to define, limit or describe the scope or intent of any provision of this Lease.
- 7.5 Non-Business Days. If the date for any action under this Lease Agreement, other than the beginning or end of the Initial Lease Term and Extended Lease Term, falls on a Saturday, Sunday or a day that is a legal holiday, then the relevant date shall be extended automatically until the next day that is not a Saturday, Sunday or holiday.
- 7.6 Amendments. This Lease Agreement may be modified, amended or revoked only by the express written agreement of both Parties hereto.
- 7.7 Entire Agreement. This Lease Agreement constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Lease Agreement are binding upon the parties.
- 7.8 Severability. If any provision or clause of this Lease Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Lease Agreement which can be given effect without the invalid or unenforceable provision, clause or application, and to this end, the provisions and clauses of this Lease Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any Party of its material benefits under this Agreement.
- 7.9 Assignment and Sublease. Neither CAWCD nor Quartzsite may assign, delegate or transfer its rights or obligations under this Lease without the prior written consent of the other Party. Any assignment, delegation or transfer made without first securing the required prior written consent of CAWCD or Quartzsite, as applicable, shall be void, and not merely voidable.
- 7.10 Attorneys' Fees. Except as otherwise set forth in this Lease Agreement, the Parties shall bear their own attorneys' fees and costs incurred in resolving any claims based on or arising from this Lease Agreement, as well as in the preparation of this Lease Agreement. In the event that any Party commences an action to enforce or interpret this Lease Agreement, or for any other remedy based on or arising from this Lease Agreement, the prevailing party therein shall be entitled to recover its reasonable and necessary attorneys' fees and costs incurred. For the purposes of this provision the "prevailing party" shall be that party which has been successful with regard to the main issue, even if that Party did not prevail on all issues; however, the court shall retain discretion to limit the award of fees and costs to those reasonably and necessarily incurred on those issues on which the prevailing party was

successful.

- 7.11 No Encumbrances. Quartzsite warrants and represents that to the best of its actual knowledge the Quartzsite Entitlement is free and clear of all liens and encumbrances and obligations that would prevent Quartzsite from leasing the Quartzsite Entitlement to CAWCD and/or prevent CAWCD from utilizing the Quartzsite Entitlement consistent with this Leased Agreement to the fullest extent during the Initial Lease Term or, if applicable, the Extended Lease Term.
- 7.12 Right to Enter into Lease. Each Party hereby warrants and represents that it has the full right and lawful authority to enter into this Lease Agreement.
- 7.13 Waiver. No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving party. A waiver by any party of any right or remedy hereunder shall not be construed as a waiver of any other right or remedy, whether pursuant to the same or a different term, condition or covenant.
- 7.14 Conflicts of Interest. The parties to this Lease Agreement are hereby notified of A.R.S. § 38-511.
- 7.15 Notices. Except as otherwise required by law, any notice given in connection with this Lease Agreement must be in writing and must be given by personal delivery, overnight delivery, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD:

For delivery use: Central Arizona Water Conservation District
Attn: General Manager
23636 N. 7th Street
Phoenix, AZ 85024

For U.S. Mail use: Central Arizona Water Conservation District
Attn: General Manager
P.O. Box 43020
Phoenix, AZ 85080-3020

QUARTZSITE:

For delivery use: Town of Quartzsite
Attn: Town Manager
465 N. Plymouth Avenue
Quartzsite, AZ 85346

For U.S. Mail use: Town of Quartzsite
 Attn: Town Manager
 P.O. Box 2812
 Quartzsite, AZ 85346

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused. The Parties may designate a new contact person under this provision for notices or invoices or change the address, email address or fax number identified above by notifying the other Party in writing.

- 7.16 Binding Effect. This Lease Agreement and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, if any.
- 7.17 No Third Party Beneficiaries. This Lease is not intended by the Parties to create any right or benefit to anyone other than Quartzsite and CAWCD. This Agreement does not create any third party beneficiary rights or causes of action.
- 7.18 Force Majeure. Each Party shall be excused from performance under this Lease Agreement while and to the extent that it is unable to perform, for any cause beyond its reasonable control, except that CAWCD's payment obligations hereunder shall not be delayed or excused by reason of force majeure. Such causes shall include, but not be restricted to, fire, drought, storm, flood, earthquake, explosion, war, labor disputes, total or partial failure of transportation or delivery facilities, shortage of labor, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either Party is rendered unable wholly or in part by force majeure to carry out its obligations under this Lease Agreement then the Party affected by force majeure shall have the right to terminate this Lease Agreement upon thirty (30) days' written notice to the other Party.

(Signatures on Next Page)

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

TOWN OF QUARTZSITE

By: _____
Norm Simpson

Its: Mayor

Attest: _____
Town Clerk

Approved as to form:

By: _____
Town Attorney

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Lisa A. Atkins

Its: President

Attest:

By: _____
Sharon B. Megdal

Its: Secretary

EXHIBIT A

Copy of Quartzsite Contract