



**CENTRAL ARIZONA PROJECT
Board of Directors
June 10, 2021 - 10:00 AM**

Virtual Meeting
The public may view the meeting at
www.cap-az.com/board/meetings

Agenda item 6a added. Additional materials added for items 5b and 23.

FINAL AGENDA

Times shown are approximate. Some items may take more or less time than scheduled, or the President may grant requests to hear items in an order other than shown.

1. Pledge of Allegiance, Moment of Silence and Safety Minute - Pinger-Tornquist (10:00)
2. Recognition of Employees Celebrating Service Anniversaries: Chuck Cullom, George Garcia, Ernesto Castanon, Walter Hoover, Larry Green, Scott Isom, Brandon Johnson, Peter Lin, Darrin Francom - 20 Years; Leslie Olsen, Danette Sigmon - 25 Years (10:05)
3. Consideration of Action to Approve Items on the Consent Agenda** (10:15)
 - a. Minutes of the May 6, 2021 Regular Meeting - Arboleda
 - b. Construction Contract for West Plants Exciter Replacement at Hassayampa Pumping Plant (*Project Reliability*^) - Francom
 - c. Construction Contract for Installation of Electrical Bus Equipment at Waddell Pumping Plant (*Project Reliability*^) - Francom
 - d. Contract for Janitorial Services (*Project Reliability*^) - Hall
 - e. Final CAWCD Ad Valorem Taxes for the 2021/2022 Tax Year - Hall
 - i. Fix the General Ad Valorem Tax Rate Pursuant to A.R.S. §48-3715, Subsection A
 - ii. Fix the Water Storage Tax Rate and Adopt a Resolution Regarding the Use of the 2021/2022 Water Storage Tax Pursuant to A.R.S. §48-3715.02, Subsections B and C
 - f. Final Rate Schedules - Hall/Dunlap
 - i. 2022-2026 Water Delivery and Capital Charge Rate Schedule
 - ii. 2021/22 - 2025/26 CAGRD Rate Schedule, including collection of annual membership dues
 - iii. 2022-2026 Underground Water Storage Rate Schedule
4. Consideration of Action to Approve Items Removed from the Consent Agenda
5. Reports of Committees and Possible Consideration of Committee Recommendations (10:20)
 - a. Public Policy Committee - Brown
 - i. Possible Consideration of Action on Policy Issues that Could Impact CAP
 - b. Finance, Audit and Power Committee - Taylor
 - c. CAGRD and Underground Storage Committee - Arboleda
6. Consideration of Action to go into Executive Session of the Board for the following purposes: (10:40)
(*The discussions and minutes of the executive session shall be kept confidential. The executive session of the Board is not open to the public.*)***
 - a. Pursuant to A.R.S. §38-431.03.A.3 and A4, to obtain legal advice with the attorneys for the District regarding Subcontracts for CAP NIA Water; and

- b. Pursuant to A.R.S. §38-431.03.A.3 to obtain legal advice from the District's attorneys on any matter listed on the agenda
7. Reconvene in Open Session (11:10)
8. Consideration of Action Regarding Items Discussed in Executive Session
9. Discussion and Consideration of Action to Enter into Subcontracts for CAP NIA Priority Water with Carefree Water Company, Town of Cave Creek, EPCOR-Sun City West, EPCOR-San Tan, Town of Queen Creek, Town of Marana, Apache Junction Water Utilities Community Facilities District, City of El Mirage, Town of Gilbert, City of Buckeye, CAWCD (in its capacity as the Central Arizona Groundwater Replenishment District), Viewpoint RV and Golf Resort, New Harquahala Generating Company, Rosemont Copper Company, Salt River Project, Resolution Copper Mining, Freeport-McMoRan-Sierrita, Inc. (*Water Supply*[^]) - Adams (11:10)
10. Report on Colorado River Conditions (*Water Supply*[^]) - Mahmoud (11:25)
11. Report on Water Operations (*Project Reliability*[^]) - Crandall (11:35)
12. Report on System Conservation in 2020 and 2021 (*Water Supply*[^]) - Ikeya (11:50)
13. Report on Potential Reclamation DCP System Conservation Project with Gila River Indian Community (*Water Supply*[^]) - Cullom (12:05)
14. Report on Potential 2021-2024 Interstate System Conservation Project with CAWCD, Reclamation, Metropolitan Water District of Southern California and Southern Nevada Water Authority (*Water Supply*[^]) - Cullom (12:20)
15. Recess (12:35)
16. Discussion and Consideration of Action to Approve Joint Colorado River Augmentation Opportunity with the Arizona Department of Water Resources and the Metropolitan Water District of Southern California Regional Recycled Water Program (*Stewardship and Sustainability*[^]) - Cullom/Adams (12:55)
17. Report on Reconsultation Activities - Cooke/Cullom (1:15)
 - a. May 26, 2021 Arizona Reconsultation Committee Meeting
 - b. May 13, 2021 Arizona Reconsultation Committee Modeling and Analysis Workgroup Meeting
18. Report on Preparation for Possibility of Tier 1 Shortage in 2022 (*Water Supply*[^]) - Cooke (1:35)
19. Report on Legal Matters (*Public Trust, Partnerships and Leadership*[^]) - Johnson (1:45)
20. Directors' Report on Current Events (1:50)
21. Future Agenda Items (2:05)
22. President's Report on Current Events - Goddard (2:10)
23. General Manager's Report on Current Events - Cooke (2:20)
24. Public Comment (2:30)
25. Adjourn (2:35)

** Items listed in the Consent Agenda may be acted on by the Board without discussion. Any item listed on the Consent Agenda may be removed from the Consent Agenda and acted on separately by the Board.

*** The Executive Session is expected to last approximately one hour and will not be open to the public.

[^] Linkage to CAWCD Board of Directors Strategic Plan.

In accordance with the Americans with Disabilities Act (ADA), if you need reasonable accommodations due to a disability, please contact the CAP office at (623.869.2333) or TDD (623.869.2183) at least seventy-two (72) hours in advance of the meeting.



**CENTRAL ARIZONA WATER CONSERVATION DISTRICT
Regular Meeting of the Board of Directors
May 6, 2021**

The regular meeting of the Central Arizona Project ("CAWCD" or "CAP") Board of Directors was called to order by President Terry Goddard on May 6, 2021, at 10:00 a.m. The meeting was held virtually and broadcast for the public via livestream.

Board Members present were: President Terry Goddard, Maricopa County; Vice President Mark Taylor, Pima County; Secretary Alexandra Arboleda, Maricopa County; Jennifer Brown, Maricopa County; Karen Cesare, Pima County; Benjamin W. Graff, Maricopa County; Jim Holway, Maricopa County; Pat Jacobs, Pima County; Mark Lewis, Maricopa County; Heather A. Macre, Maricopa County; Jennifer Martin, Maricopa County; Stephen Miller, Pinal County; Marie Pearthree, Pima County; and April Pinger-Tornquist, Maricopa County.

Board Members not present were: Lisa A. Atkins, Maricopa County.

Staff members present were Ted Cooke, General Manager; Patrick Dent, Assistant General Manager of Water Policy; Christopher Hall, Assistant General Manager of Finance & Administration; Darrin Francom, Assistant General Manager of Operations, Maintenance and Engineering; Jay Johnson, General Counsel; Bridget Schwartz-Manock, Director of Public Affairs; Laura Grignano, Manager, CAGRD; Doug Dunlap, Manager, Finance and Accounting; Chuck Cullom, Manager, Colorado River Programs; Jeff Gray, Manager, Legislative Affairs; Greg Adams, Senior Attorney; Megan Casey, Public Affairs Management Analyst; and Jennifer Miller, Board Support Specialist.

Bridget Schwartz-Manock, Director of Public Affairs, performed a roll call and confirmed a quorum was present. President Goddard reviewed the details of the virtual meetings, noting the meeting was livestreamed for the public.

1. PLEDGE OF ALLEGIANCE, MOMENT OF SILENCE AND SAFETY MINUTE - MACRE

Board Member Macre gave a safety minute on occupational safety.

2. CONSIDERATION OF ACTION TO APPROVE ITEMS ON THE CONSENT AGENDA**

On a motion (Secretary Arboleda) and a second (Board Member Jacobs), approved the minutes of the April 1 meeting; approved the Agreement for Water Storage at the Superstition Mountains Recharge Project between CAWCD and the Town of Gilbert; and approved the award for the construction contract to Corbins Electric in the amount of \$2,518,632 plus an additional \$251,863 (10%) for contingencies (totaling \$2,770,495), for the Construction of the Backup Power Systems Upgrades Project, at sixteen Check Structures, two Turnouts, and two Microwave Sites, and authorized the General Manager, or his designee, to execute the contract and administer the contingency. Motion passed.

Voting yes: Terry Goddard, Mark Taylor, Alexandra Arboleda, Jennifer Brown, Karen Cesare, Benjamin W. Graff, Jim Holway, Pat Jacobs, Mark Lewis, Heather A. Macre, Jennifer Martin, Stephen Miller, Marie Pearthree

Not voting: April Pinger-Tornquist

3. CONSIDERATION OF ACTION TO APPROVE ITEMS REMOVED FROM THE CONSENT AGENDA

None.

4. REPORTS OF COMMITTEES AND POSSIBLE CONSIDERATION OF COMMITTEE RECOMMENDATIONS

4.a. PUBLIC POLICY COMMITTEE - BROWN

Board Member Brown gave a report on the May 6, 2021 Public Policy meeting. She shared an update on the state legislative session and an update on federal issues, noting nominations to the Department of Interior, the federal budget and legislation. Jay Johnson, General Counsel, answered a question from Board Member Jacobs regarding tribal water rights settlements.

4.a.i. POSSIBLE CONSIDERATION OF ACTION ON POLICY ISSUES THAT COULD IMPACT CAP

None.

4.b. FINANCE, AUDIT AND POWER COMMITTEE - TAYLOR

Vice President Taylor gave a report on the April 15 FAP Committee meeting, noting the committee voted to authorize publication of the 2020 Independent Audit and heard presentations on the budget and reserves.

4.b.i. DISCUSSION AND CONSIDERATION OF ACTION TO APPROVE PURCHASING POLICY THRESHOLDS (FINANCE^)- HALL

Vice President Taylor reported the Committee voted unanimously to approve increased purchasing policy thresholds, which had not been adjusted since 2000.

On a motion (Vice President Taylor) and a second (Board Member Jacobs), approved the proposed revisions to the Purchasing Policy. Motion passed.

Voting yes: Terry Goddard, Mark Taylor, Alexandra Arboleda, Jennifer Brown, Karen Cesare, Benjamin W. Graff, Jim Holway, Pat Jacobs, Mark Lewis, Heather A. Macre, Jennifer Martin, Stephen Miller, Marie Pearthree

Not voting: April Pinger-Tornquist

4.b.ii. DISCUSSION AND CONSIDERATION OF ACTION REGARDING PRELIMINARY CAWCD AD VALOREM TAXES AND RATES (FINANCE^)- HALL/DUNLAP

Vice President Taylor reported on the discussion by the Committee regarding taxes and rates, noting the Committee considered three options for the rates. Chris Hall, Assistant General Manager of Finance and Administration, gave a presentation on the FAP Committee

recommendation to set the ad valorem tax rate at ten cents (\$0.10), the water storage tax rate at four cents (\$0.04), and adopted a resolution regarding the use of the water storage tax. He also reported the Committee recommended approval of the rate schedule with 1.5 cents applied toward the 2023 federal repayment.

In response to questions from Board Members Pearthree and Lewis, Mr. Hall provided information on the extraordinary cost reserve balance and the property tax rate. Board Member Holway commented on decreased energy rates.

One individual submitted public testimony:

Emily Lewis, City of Phoenix Water Services, submitted an electronic blue card in support of the FAP Committee recommendation and shared comments on capital charges and the use of the ad valorem tax.

4.b.ii.1. FIX THE 2021/2022 GENERAL AD VALOREM TAX RATE PURSUANT TO A.R.S. §48-3715, SUBSECTION A

Vice President Taylor moved to set the tax rate at 10 cents. Board Member Lewis moved to amend the motion to set the tax rate at 9.5 cents. Board Members Jacobs, Holway, Pinger-Tornquist and Vice President Taylor expressed their views on the proposed motions. The Lewis amendment failed on a vote of 4-10.

On a motion (Vice President Taylor) and a second (Board Member Jacobs), fixed the CAWCD General Ad Valorem Tax Rate at ten cents (\$0.10) per one hundred dollars (\$100) of assessed valuation for the 2021/2022 tax year. Motion passed.

Voting yes: Terry Goddard, Mark Taylor, Alexandra Arboleda, Jennifer Brown, Karen Cesare, Benjamin W. Graff, Pat Jacobs, Heather A. Macre, Jennifer Martin, Marie Pearthree

Voting no: Jim Holway, Mark Lewis, Stephen Miller, April Pinger-Tornquist

4.b.ii.2. FIX THE 2021/2022 WATER STORAGE TAX RATE AND ADOPT A RESOLUTION REGARDING THE USE OF THE 2021/2022 WATER STORAGE TAX PURSUANT TO A.R.S. §48-3715.02, SUBSECTIONS B AND C.

On a motion (Vice President Taylor) and a second (Board Member Jacobs), fixed the CAWCD Water Storage Tax Rate at four cents (\$0.04) per one hundred dollars (\$100) of assessed valuation for the 2021/2022 tax year and adopted a resolution determining that all of the Water Storage tax levied in tax year 2021/2022, except for \$7 million requested by the AWBA for the purchase of long term storage credits in 2022, is required for CAP repayment or annual operations, maintenance and replacement costs, including CAWCD costs for AWBA M&I firming. Motion passed.

Voting yes: Terry Goddard, Mark Taylor, Alexandra Arboleda, Jennifer Brown, Karen Cesare, Benjamin W. Graff, Jim Holway, Pat Jacobs, Mark Lewis, Heather A. Macre, Jennifer Martin, Stephen Miller, Marie Pearthree, April Pinger-Tornquist

4.b.ii.3. ADOPT THE PRELIMINARY 2022-2026 RATE SCHEDULE

Board Member Holway requested CAP initiate a study to look at potential rate structures, price signals and if costs are appropriately shared between customers and ratepayers. Vice President Taylor committed to discussing these issues at the FAP Committee for the next rate setting cycle. Board Member Lewis requested that multiple options for rates be placed on the June Board meeting agenda. Vice President Taylor, Secretary Arboleda, and Board Members Lewis, Pinger-Tornquist, Holway and Jacobs expressed their views on the rates and the rate setting process.

On a motion (Vice President Taylor) and a second (Board Member Miller), approved the CAP Preliminary 2022-2026 Water Rate Schedule as attached to the action brief. Motion Passed.

Voting yes: Terry Goddard, Mark Taylor, Alexandra Arboleda, Jennifer Brown, Karen Cesare, Benjamin W. Graff, Pat Jacobs, Mark Lewis, Heather A. Macre, Jennifer Martin, Stephen Miller, Marie Pearthree

Voting no: Jim Holway, April Pinger-Tornquist

4.c. CAGRD AND UNDERGROUND STORAGE COMMITTEE - ARBOLEDA

Secretary Arboleda gave a report on the topics discussed at the April 15 CAGRD Committee meeting. She noted the items on the agenda for the next meeting.

4.c.i. DISCUSSION AND CONSIDERATION OF ACTION TO APPROVE A PRELIMINARY CAGRD RATE SCHEDULE FOR 2021/2022 THROUGH 2025/2026, INCLUDING COLLECTION OF ANNUAL MEMBERSHIP DUES (GROUNDWATER REPLENISHMENT^) - DUNLAP

Secretary Arboleda reported the CAGRD Committee recommended approval of the CAGRD rate schedule and collection of dues.

On a motion (Secretary Arboleda) and a second (Board Member Jacobs), approved the CAGRD Preliminary Rate Schedule for 2021/22 through 2025/26, including the collection of annual membership dues. Motion passed.

Voting yes: Terry Goddard, Mark Taylor, Alexandra Arboleda, Jennifer Brown, Karen Cesare, Benjamin W. Graff, Jim Holway, Pat Jacobs, Mark Lewis, Heather A. Macre, Jennifer Martin, Stephen Miller, Marie Pearthree, April Pinger-Tornquist

4.c.ii. DISCUSSION AND CONSIDERATION OF ACTION TO APPROVE A PRELIMINARY UNDERGROUND WATER STORAGE 2022 - 2026 RATE SCHEDULE (GROUNDWATER REPLENISHMENT^) - DUNLAP

Secretary Arboleda reported the CAGRD Committee recommended approval of the Underground Storage rate schedule, noting there is no change from the Board-approved rates in 2020.

On a motion (Secretary Arboleda) and a second (Board Member Jacobs), adopted the Preliminary Underground Water Storage O&M and Underground Water Storage Capital Charge Rate Schedule for 2022 through 2026. Motion passed.

Voting yes: Terry Goddard, Mark Taylor, Alexandra Arboleda, Jennifer Brown, Karen Cesare, Benjamin W. Graff, Jim Holway, Pat Jacobs, Mark Lewis, Heather A. Macre, Jennifer Martin, Stephen Miller, Marie Pearthree, April Pinger-Tornquist

5. REPORT ON CURRENT CAP COORDINATION WITH SALT RIVER PROJECT (PROJECT RELIABILITY^) - FRANCOM

Darrin Francom, Assistant General Manager for Operations, Engineering and Maintenance, described the major coordination areas between CAP and SRP, including water delivery, flood control, electrical power and electrical transmission.

In response to questions from President Goddard, Vice President Taylor and Board Members Brown and Pearthree, Mr. Francom provided information on exchanges, the proposed SRP to CAP Interconnection Facility, storage capacity and coordination with SRP.

6. RECESS

The Board recessed at 11:33 a.m. and reconvened at 12:02 p.m.

Ms. Schwartz-Manock performed a roll call and confirmed a quorum was present.

7. REPORT ON PREPAREDNESS FOR INTERRUPTION OF CAP WATER SUPPLY (PROJECT RELIABILITY^) - FRANCOM

Mr. Francom reported on preparedness for a canal breach, including a review of a breach in 2012, the steps taken to mitigate future impacts for canal outages and the application of lessons learned.

In response to questions from President Goddard, Vice President Taylor, Secretary Arboleda, and Board Members Pearthree and Jacobs, Mr. Francom provided detail on potential impacts of canal outages, fiber optics, and system-wide reliability.

8. DISCUSSION ON NIA SUBCONTRACTING (WATER SUPPLY^) - ADAMS

Greg Adams, Senior Attorney, reviewed the background and process for issuing subcontracts for delivery of CAP NIA Priority water, and the subcontract template to be offered to NIA reallocation entities.

9. REPORT ON COLORADO RIVER CONDITIONS (WATER SUPPLY^) - CULLOM

Chuck Cullom, Colorado River Programs Manager, gave an update on the status of the reservoirs in the Colorado River System, snow accumulation forecasts, elevations for Lakes Powell and Mead, and the May 2021 probability of system conditions.

In response to questions from Secretary Arboleda and Vice President Taylor, Mr. Cullom provided detail on Drought Contingency Plan provisions and Hoover power allocation.

10. DISCUSSION AND CONSIDERATION OF ACTION TO APPROVE AGREEMENT BETWEEN CAWCD AND THE BUREAU OF RECLAMATION REGARDING THE 242 WELL FIELD AND PIPELINE CONSERVATION PROJECT (WATER SUPPLY^) - CULLOM

Mr. Cullom gave a brief overview of the agreement.

On a motion (Vice President Taylor) and a second (Board Member Jacobs), authorized the General Manager to execute a letter agreement with the United States Bureau of Reclamation in substantially the same form as the attached agreement, whereby CAWCD forgoes diversion of Colorado River water made available to CAWCD due to additional pumping by Reclamation of the 242 well field pursuant to the Reclamation commitments under the DCP. Motion passed.

Voting yes: Terry Goddard, Mark Taylor, Alexandra Arboleda, Jennifer Brown, Karen Cesare, Jim Holway, Pat Jacobs, Heather A. Macre, Jennifer Martin, Stephen Miller

Not voting: Benjamin W. Graff, Mark Lewis, Marie Pearthree, April Pinger-Tornquist

11. DISCUSSION ON JOINT COLORADO RIVER AUGMENTATION OPPORTUNITY WITH THE ARIZONA DEPARTMENT OF WATER RESOURCES AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA REGIONAL RECYCLED WATER PROJECT (STEWARDSHIP AND SUSTAINABILITY^) - CULLOM

Mr. Cullom reported on the MWD Regional Recycled Water Project firming and augmentation opportunity. He reviewed potential participation by the Arizona Department of Water Resources (ADWR), CAP and the Southern Nevada Water Authority, and the three agreements necessary to explore the opportunity.

In response to questions from President Goddard, Vice President Taylor, and Secretary Arboleda, Mr. Cullom provided detail on funding and environmental permitting. Mr. Cullom and General Manager Ted Cooke reviewed the benefits to MWD. President Goddard, Vice President Taylor and Board Member Brown expressed their views on the project.

12. RECESS

The Board recessed at 2:18 p.m. and reconvened at 2:25 p.m.

13. REPORT ON PREPARATION FOR POSSIBILITY OF TIER 1 SHORTAGE IN 2022 (WATER SUPPLY^) - DENT

Patrick Dent, Assistant General Manager for Water Policy, gave a report on shortage preparation work and the April 29 Joint Briefing with ADWR. He also reported on next steps, noting a water user briefing planned for June.

14. REPORT ON LEGAL MATTERS (PUBLIC TRUST, PARTNERSHIPS AND LEADERSHIP^) - JOHNSON

Jay Johnson, General Counsel, gave an update on the *Navajo Nation v. United States* litigation in which CAWCD is an intervening defendant.

15. DIRECTORS' REPORT ON CURRENT EVENTS

Vice President Taylor, Secretary Arboleda and Board Members Brown, Cesare, Graff, Holway, Macre, Martin and Miller shared updates on recent CAP activities.

16. FUTURE AGENDA ITEMS

Board Member Macre noted the importance of continued agenda items on shortage preparation and Colorado River conditions. Board Member Holway noted the discussion proposed during the discussion on taxes and rates, and Vice President Taylor stated he will add that to the FAP Committee agenda. Board Member Graff requested follow up from staff about outreach to municipal economic development departments.

17. PRESIDENT'S REPORT ON CURRENT EVENTS - GODDARD

President Goddard noted recent outreach efforts by the Board Officers to have meetings with municipal and tribal stakeholders.

18. GENERAL MANAGER'S REPORT ON CURRENT EVENTS - COOKE

Mr. Cooke reported on items that will be on the consent agenda in June, including a construction contract for exciter replacement at Hassayampa Pumping Plant, a construction contract for installation of bus equipment at Waddell Pumping Plant, and a contract for janitorial services at Headquarters. He also noted the June agenda will include a presentation on Robert's Rules of Order. Mr. Cooke recognized the retirement of Assistant General Manager Bob Moody after 36 years of service and reviewed his many contributions to CAP.

19. PUBLIC COMMENT

One public comment was received from the City of Scottsdale regarding the planned vote on the Water Quality Guidance Document that was removed from the meeting agenda, urging the Board to approve the Document.

20. CONSIDERATION OF ACTION TO GO INTO EXECUTIVE SESSION OF THE BOARD FOR THE FOLLOWING PURPOSES: PURSUANT TO A.R.S. §38-431.03.A.3, A.4, AND A.6 TO CONSULT WITH THE ATTORNEYS FOR THE DISTRICT REGARDING MATTERS RELATED TO INTERSTATE STORAGE OF INTENTIONALLY CREATED SURPLUS (ICS); AND PURSUANT TO A.R.S. §38-431.03.A.3 TO OBTAIN LEGAL ADVICE FROM THE DISTRICT'S ATTORNEYS ON ANY MATTER LISTED ON THE AGENDA

On a motion (Vice President Taylor) and a second (Board Member Brown), the Board convened in Executive Session at 3:17 p.m. for the purposes listed on the agenda. Motion passed.

Voting yes: Terry Goddard, Mark Taylor, Alexandra Arboleda, Jennifer Brown, Karen Cesare, Benjamin W. Graff, Jim Holway, Pat Jacobs, Heather A. Macre, Jennifer Martin, Stephen Miller, Marie Pearthree

Not voting: Mark Lewis, April Pinger-Tornquist

21. RECONVENE IN OPEN SESSION

The Board reconvened at 3:57 p.m.

Ms. Schwartz-Manock performed a roll call and confirmed a quorum was present.

22. CONSIDERATION OF ACTION REGARDING ITEMS DISCUSSED IN EXECUTIVE SESSION

None.

23. ADJOURN

There being no further business to come before the Board, the meeting adjourned at 3:58 p.m.

Alexandra M. Arboleda
Board Secretary

ACTION BRIEF

BOARD OF DIRECTORS



Agenda Number 3.b

CONTACT: Darrin Francom Ryan Johnson
623-869-2276 623-869-2223
dfrancom@cap-az.com rjohnson@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: Construction Contract for West Plants Exciter Replacement at Hassayampa Pumping Plant (*Project Reliability*^) - Francom

RECOMMENDATION: Staff recommends that the Board approve the award of a Construction Contract for the West Plant Motor Exciter Project at Hassayampa Pumping Plant to Cannon & Wendt Electric Co., and authorize the General Manager, or his designee, to execute an agreement up to \$2,279,048 plus \$455,810 (20%) for contingencies, totaling \$2,734,858.

FISCAL IMPLICATIONS: No

Impact on Budget:

This contract is scheduled to begin in the third quarter of 2021 and the cost is inline with the estimated budget for the overall capital project. The Project Steering Committee manages the overall capital project portfolio in accordance with the approved budget.

Additional spending authority requested: None required.

Impact on Reserves:

No impact on Strategic Reserves.

Impact on Rates:

No impact on water rates.

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

2022 CAWCD Board Strategic Plan

Project Reliability: Providing reliable and cost-effective operations, maintenance, and replacement of CAP's infrastructure and technology assets

Arizona Revised Statutes Title 34-603 Procurement of professional services and construction-manager-at-risk, design-build, and job-order-contracting construction services

CAP Purchasing Policy

PREVIOUS BOARD ACTION/ACTIVITY:

June 2018 and April 2019 Board approved award of Design Contract and Construction Contract for Salt Gila Pumping Plant to Arcadis

May 2019 Board approved award of Design Contract for Bouse Hills Pumping Plant to

| | |
|----------------|--|
| | Arcadis |
| April 2020 | Board approved award of Construction Contract for Bouse Hills Pumping Plant to Cannon & Wendt Electric Co. |
| September 2020 | Board approved award of Design Contract for Hassayampa Pumping Plant to E2 Power Systems, LLC |

ISSUE SUMMARY/DESCRIPTION:

The West Plant Motor Excitation Replacement full program consists of 40 pump units that operate across the Bouse Hills, Little Harquahala, Hassayampa, and Salt Gila Pumping Plants. The pump units are currently operated and protected by our Siemens-Allis static exciters which have been in operation for almost thirty years and have reached the end of life. Since the system is out of date, it causes challenges for our maintenance personnel to find adequate replacement parts to make repairs when the system fails.

This project will implement an upgraded modern digital excitation system, controller, and rectifier bridge assembly for each pump unit at Hassayampa, the third pumping plant to have the excitation systems replaced as part of this program. The new digital excitation system will provide voltage regulation, true alternating current voltage sensing, power factor control and additional features for diagnostics.

The replacement of the excitation system is required so we can provide a reliable and more efficient pump motor. The increased operating efficiency will allow CAP customers to receive reliable water deliveries.

Cannon and Wendt Electric Co. was selected pursuant to a cooperative Job-Order-Contract agreement and in accordance with Arizona Revised Statutes Title 34 and CAP’s Purchasing Policy. This allows CAP to engage a qualified contractor that meets the required criteria and standards without needing to undertake a secondary bidding process.

Accordingly, staff engaged Cannon & Wendt Electric Co. in scope definition and price negotiation discussions for the required construction scope of work and believes the price of the contract is fair and reasonable. Cannon and Wendt Electric Co. has been successful in the execution of this same project scope at Bouse and has developed a sound understanding of the scope, schedule, and effort needed to be successful in this project.

SUGGESTED MOTION:

I move that the Board of Directors approve the award of a Construction Contract to Cannon & Wendt Electric Co. for \$2,279,048 plus \$455,810 (20%) for contingencies, totaling \$2,734,858 for installing static motor exciters at Hassayampa Pumping Plant as part of the on-going West Plant Motor Excitation Replacement Project, and authorize the General Manager, or his designee, to execute the contract and administer the contingency.

ATTACHMENTS:

None

ACTION BRIEF

BOARD OF DIRECTORS



Agenda Number 3.c

CONTACT: Darrin Francom Ryan Johnson
623-869-2276 623-869-2223
dfrancom@cap-az.com rjohnson@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: Construction Contract for Installation of Electrical Bus Equipment at Waddell Pumping Plant (*Project Reliability*[^]) - Francom

RECOMMENDATION: Staff recommends that the Board approve the award of a Construction Contract for the installation of the new electrical bus equipment at Waddell Pump/Generating Plant to Ludvik Electric Company, and authorize the General Manager, or his designee, to execute an agreement up to \$559,763 plus \$111,953 (20%) for contingencies, totaling \$671,716.

FISCAL IMPLICATIONS: No

Impact on Budget:

Construction will commence in the third quarter of 2021 and complete by the end of 2021. This contract cost is in-line with the estimates utilized to create the 2021 Capital Budget. The Project Steering Committee manages project work and expenses within the overall approved capital budget.

Additional spending authority requested: None required.

Impact on Reserves:

No impact on Strategic Reserves.

Impact on Rates:

No impact on water rates.

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

2022 CAWCD Board Strategic Plan

Project Reliability: Providing reliable and cost-effective operations, maintenance, and replacement of CAP's infrastructure and technology assets

ARS Title 34-603 Procurement of professional services and construction-manager-at-risk, design-build, and job-order-contracting construction services

CAP Purchasing Policy

PREVIOUS BOARD ACTION/ACTIVITY:

March 2021 Board approved award of Purchase Contract for Fabrication and Delivery of Bus Equipment at Waddell Pump/Generating Plant to Technibus Inc.

ISSUE SUMMARY/DESCRIPTION:

Non-segregated bus refers to an assembly of electrical conductors with associated connections, joints, and insulating supports confined within a metal enclosure. In this instance, the non-segregated bus carries a significant electrical current, from the switchyard to the pumping plant, required to operate the pump and pump-generator units at Waddell. The installation of the replacement bus at the Waddell Pump-Generating Plant follows all electrical codes and will improve the reliability of the plant's electrical service. The existing non-segregated bus components at Waddell have reached the end of their useful life and are temporarily protected from the elements by tarp material wrapped around the existing bus enclosure to prevent moisture and debris intrusion that can cause electrical faults. The new bus will provide a safe and reliable means to convey the power from the switchyard into the plant.

The equipment purchase contract was previously approved by CAP Board of Directors at the March 2021 board meeting, to supply the medium voltage bus equipment. This Job Order Contract is for installation of that equipment. This contract will begin in the third quarter of 2021 and is expected to be completed by the end of 2021.

The contractor was selected pursuant to the competitive principles described in Title 34 of the Arizona Revised Statutes under the Job Order Contracting method and in accordance with CAP's Purchasing Policy. This allows CAP to engage a qualified contractor, without needing to undertake a secondary bidding process. Accordingly, staff engaged Ludvik Electric in scope definition and price negotiation discussions for the required construction scope of work.

SUGGESTED MOTION:

I move that the Board of Directors approve the award of a Construction Contract to Ludvik Electric Company for \$559,763 plus \$111,953 (20%) for contingencies, totaling \$671,716 for the installation of the new electrical bus equipment at Waddell Pump/Generating Plant, and authorize the General Manager, or his designee, to execute the contract and administer the contingency.

ATTACHMENTS:

None

ACTION BRIEF

BOARD OF DIRECTORS



Agenda Number 3.d

CONTACT: Christopher Hall Doug Nicholson
623-869-2632 623-869-2359
chall@cap-az.com dnicholson@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: Contract for Janitorial Services (*Project Reliability*^) - Hall

RECOMMENDATION: Staff recommends that the Board approve the award of a purchasing contract to ABM Industry Groups LLC (formally GCA Services Group, Inc.) for janitorial services at CAP Headquarters, Waddell Pumping Plant, Salt Gila Pumping Plant, and Pinal Field Office field locations beginning July 1, 2021 through June 30, 2022; and authorize the General Manager, or his designee to execute an agreement for \$354,984 plus \$53,248 (15%) for contingencies for a total \$408,232.

FISCAL IMPLICATIONS: Yes

Impact on Budget:

| | 2021 | 2022* |
|--------------------------|------------|-----------|
| Funds Used / Requested | \$204,116 | \$204,116 |
| Funds Included in Budget | \$180,573 | \$204,116 |
| (Over) / Under Budget | (\$23,543) | \$0 |

*To be requested in the 2022 budget

Additional spending authority requested: None required, will be managed within current budget

Impact on Reserves:

None

Impact on Rates:

None

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

2022 CAWCD Board Strategic Plan

Project Reliability: *Providing reliable and cost-effective operations, maintenance, and replacement of CAP's infrastructure and technology assets*

CAWCD Purchasing Policy

PREVIOUS BOARD ACTION/ACTIVITY:

November 2, 2017 Board approved the CAP 2018-2019 Biennial Budget

June 2, 2018 Board approved a one-year Janitorial Services contract to GCA Services Group, Inc. with four one-year renewal options for \$300,783 plus \$30,783 (10%) for contingencies (totaling \$330,862)

November 2, 2019 Board approved the CAP 2020-2021 Biennial Budget
June 4, 2020 Board approved the second one-year contract renewal option for the Janitorial Services Contract to GCA Services Group, Inc. for \$382,690 plus \$57,404 (15%) for contingencies (totaling \$440,094)

ISSUE SUMMARY/DESCRIPTION:

This contract is for janitorial services at Headquarters, Waddell Pumping Plant, Salt Gila Pumping Plant and the Pinal Field Office. Janitorial services for the Tucson Field Office and Mark Wilmer Pumping Plant are performed under separate contracts due to their locations.

Janitorial services includes all the labor, equipment and supplies necessary to provide a clean, healthy and safe working environment for CAP employees and visitors. Services at Headquarters includes cleaning of all general office space, corridors, break areas and restrooms in Building 1, Building 2, Helicopter Hangar, and Waste Accumulation Area. The services at the Pumping Plants and Field Office includes cleaning of all general office space, visitor areas, break areas, and restrooms.

The janitorial services contract began on July 1, 2018 effective through June 30, 2019. Proposals were received from seven companies and GCA Services, Inc. was awarded the contract based on published criteria comprised of understanding and approach to service requirements, experience, training, benefits and reporting, and price. GCA Services was acquired by ABM Industry Groups LLC in 2019 and the work has been performed in a professional manner in accordance with the provisions of the contract.

The contract included a provision for four one-year extensions, the first extension was authorized June 6, 2019, and the second extension was authorized June 4, 2020. This is the third extension, and the cost decrease is driven by the reduction of enhanced cleaning and disinfection requirements due to COVID-19. If the renew option is exercised for the remaining extension the renewal will be presented to the CAWCD Board for approval.

SUGGESTED MOTION:

I move that the Board of Directors approve the Award of a Purchasing Contract to ABM Industry Groups LLC (formally GCA Services Group, Inc.) for janitorial services at CAP Headquarters, Waddell Pumping Plant, Salt Gila Pumping Plant, and Pinal Field Office field locations beginning July 1, 2021 through June 30, 2022 for \$354,984 plus \$53,248 (15%) for contingencies, totaling \$408,232 with the option for CAP to renew the contract for one additional one-year term, and to authorize the General Manager to execute the agreement.

ATTACHMENTS:

None



Preliminary Ad Valorem Taxes, Capital Charges, and Rates

Chris Hall

Assistant General Manager, Finance & Administration

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Background

Staff published the preliminary rate sheet in April, accounting for the movement into Tier 1 Shortage in 2022 and beyond. The overall delivery charges for customers were unchanged from what had been published in the 2022 advisory rate last year under a Tier 1 scenario.

As a result of moving to Tier 1, the Ag Pool will shrink from 300,000 AF in 2021 to 105,000 AF in 2022. Of this, only 42,000 AF qualifies for the “Ag Consideration”. This equates to approximately a \$5.7 million contractual obligation.

Staff outlined several potential upcoming expenditures that may necessitate replenishment of the Extraordinary Cost Reserve.

DCP Tier Fixed OM&R Rate Sensitivity

| Units = \$/acre-foot | Firm 2022 | Advisory | | | |
|-------------------------------------|--------------|----------|-------|-------|-------|
| | | 2023 | 2024 | 2025 | 2026 |
| DCP Tier | | | | | |
| Normal | \$102 | \$107 | \$113 | \$119 | \$120 |
| Tier 0 | \$109 | \$114 | \$121 | \$127 | \$128 |
| Tier 1 | \$136 | \$143 | \$153 | \$161 | \$162 |
| Tier 2a | \$146 | \$155 | \$165 | \$173 | \$174 |
| Tier 2b | \$152 | \$162 | \$172 | \$181 | \$182 |
| Tier 3 | \$164 | \$176 | \$186 | \$196 | \$197 |
| Rates are net of rate stabilization | | | | | |

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2022-2026 Preliminary Rates and 2021/2022 Ad Valorem Taxes



Potential Upcoming Extraordinary Costs

| | |
|--|-------------------------------|
| • Spook Hill Substation Decommissioning | \$500,000 - \$1,000,000 |
| • Salinity Control Act, Title II Funding (recurring) | \$4,000,000 |
| • Regional Water Recycling Program | \$4,000,000 - \$5,000,000 |
| • Critical Spare Program | \$5,000,000 - \$10,000,000 |
| • BOR Infrastructure Partnerships | \$0 - \$50,000,000 |
| • Potential 9(d) Debt Repayment | \$0 - \$88,000,000 |
| • Upfront Improvements for System Use Agreement | \$25,000,000 - \$75,000,000 |
| • Significant Infrastructure Replacement | \$150,000,000 - \$200,000,000 |
| • CAP Recovery Infrastructure | TBD |
| • Colorado River Resiliency | TBD |
| • CAP Visitor Center | TBD |

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2022-2026 Preliminary Rates and 2021/2022 Ad Valorem Taxes



General Tax Assumptions

1¢ of Tax...

...generates approximately \$6.0 million in revenue

...applied to federal repayment reduces Municipal & Industrial (M&I) Capital Charges by approximately \$9.00/acre-foot (AF)

...costs the owner of a \$200,000 LPV property home \$2.00 per year

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2022-2026 Preliminary Rates and 2021/2022 Ad Valorem Taxes



FAP Recommendation

General Ad Valorem Tax:

- Ag Consideration (1.0¢)
- 2023 Federal Repayment (1.5¢)
- Extraordinary Cost Reserve Replenishment (7.5¢)

Water Storage Tax:

- Water Bank LTSC Purchases (4.0¢)

Result:

*\$6 million going to Ag Consideration
\$9 million to repayment (\$56/acre-foot capital charge)
\$45.0 million going into Extraordinary Cost Reserve Replenishment*

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2022-2026 Preliminary Rates and 2021/2022 Ad Valorem Taxes



Federal Repayment & Capital Charges

| (\$K) Capital Charge Sensitivity Analysis – Levels | 2022 | 2023 | 2024 | 2025 | 2026 |
|---|----------|----------------------|----------|----------|----------|
| Federal Repayment | \$58,145 | \$56,813 | \$57,833 | \$56,417 | \$55,002 |
| Total Basin Development Fund Credit | (8,285) | (8,352) | (8,369) | (8,386) | (8,404) |
| Net Cash Payment | \$49,860 | \$48,461 | \$49,464 | \$48,031 | \$46,598 |
| Taxes Applied: | | | | | |
| 2020/2021 – General Ad Valorem @ 2.5¢ | (14,500) | | | | |
| 2021/2022 FAP Recommendation | | TBD (9,000) | TBD | TBD | TBD |
| Cash Needed from Capital Charges | \$35,360 | \$39,461 | \$49,464 | \$48,031 | \$46,598 |
| Allocation (acre feet) (Includes CAGR Credits & Wheeled Water) | 697,267 | 701,317 | 703,420 | 704,577 | 705,793 |
| Capital Charge (\$ acre foot) | \$50 | \$69 \$56 | \$70 | \$68 | \$66 |

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2022-2026 Preliminary Rates and 2021/2022 Ad Valorem Taxes



Preliminary 2022 – 2026 Rate Components

| Units = \$/acre-foot | Historic 2020 | Firm 2021 | Firm 2022 | Advisory | | | |
|---------------------------------|------------------|--------------|--------------|----------------------|-------|-------|-------|
| | | | | 2023 | 2024 | 2025 | 2026 |
| DCP Tier | Zero | Zero | T1 | T1 | T1 | T1 | T1 |
| Capital Charges | | | | | | | |
| (A) M&I – Long Term Subcontract | \$56 | \$53 | \$50 | \$69 \$56 | \$70 | \$68 | \$66 |
| Delivery Charges | | | | | | | |
| Fixed O&M | \$75 | \$78 | \$103 | \$105 | \$112 | \$120 | \$121 |
| “Big R” | \$24 | \$26 | \$33 | \$38 | \$41 | \$41 | \$41 |
| (B) Fixed OM&R | \$99 | \$104 | \$136 | \$143 | \$153 | \$161 | \$162 |
| (C) Pumping Energy Rate | \$56 | \$56 | \$56 | \$57 | \$61 | \$61 | \$63 |
| (D) Property Tax Equivalency | TBD | TBD | TBD | TBD | TBD | TBD | TBD |

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2022-2026 Preliminary Rates and 2021/2022 Ad Valorem Taxes



Preliminary 2022 – 2026 Rate Schedule

| Units = \$/acre-foot The Letter Designations in the Formulas Refer to the Rate Components above | Historic 2020 | Firm 2021 | Firm 2022 | Advisory | | | |
|---|------------------|--------------|--------------|----------|-------|-------|-------|
| | | | | 2023 | 2024 | 2025 | 2026 |
| DCP Tier | Zero | Zero | T1 | T1 | T1 | T1 | T1 |
| M&I Subcontract (B + C) | \$155 | \$160 | \$192 | \$200 | \$214 | \$222 | \$225 |
| Federal Contract (B + C) | \$155 | \$160 | \$192 | \$200 | \$214 | \$222 | \$225 |
| Ag Settlement Pool (C) | \$56 | \$56 | \$56 | \$57 | \$61 | \$61 | \$63 |
| Excess (A + B + C) | \$211 | \$213 | \$242 | \$269 | \$256 | \$284 | \$290 |
| | | | | | | | |

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2022-2026 Preliminary Rates and 2021/2022 Ad Valorem Taxes



FAP Recommended Motions

- Move that the Board of Directors fix the CAWCD General Ad Valorem Tax Rate at ten cents (\$0.10) per one hundred dollars (\$100) of assessed valuation
- Move that the Board of Directors fix the CAWCD Water Storage Tax Rate at four cents (\$0.04) per one hundred dollars (\$100) of assessed valuation for the 2021/2022 tax year and adopt a resolution determining that all of the Water Storage tax levied in tax year 2021/2022, except for \$7 million requested by the AWBA for the purchase of long term storage credits in 2022, is required for CAP repayment or annual operations, maintenance and replacement costs, including CAWCD costs for AWBA M&I firming.
- Move that the Board of Directors approve the attached CAP 2022-2026 preliminary rate schedule.

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2022-2026 Preliminary Rates and 2021/2022 Ad Valorem Taxes





THANK YOU

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ACTION BRIEF

BOARD OF DIRECTORS



Agenda Number 3.e.i

CONTACT: Christopher Hall Doug Dunlap
623-869-2632 623-869-2360
chall@cap-az.com ddunlap@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: Fix the General Ad Valorem Tax Rate Pursuant to A.R.S. §48-3715, Subsection A

RECOMMENDATION: The Finance, Audit and Power Committee recommends that the Board of Directors fix the CAWCD General Ad Valorem Tax Rate at ten cents (\$0.10) per one hundred dollars (\$100) of assessed valuation for the 2021/2022 tax year.

FISCAL IMPLICATIONS: Yes

Impact on Budget:

Each cent of ad valorem tax is worth approximately \$6.0 million for the 2021/2022 tax year.

The 10-cent recommendation will generate approximately \$60 million.

Additional spending authority requested: None

Impact on Reserves:

Extraordinary Cost Reserve will increase by \$45 million under the FAP recommendation.

Impact on Rates:

The FAP recommendation allocates \$9 million (1.5 cents) toward 2023 federal repayment, which has the effect of reducing the capital charge rate from \$69/AF to \$56/AF.

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

2022 CAWCD Board Strategic Plan

Finance: *Maintaining long-term financial strength to achieve CAP's goals and being prepared to address opportunities or challenges*

A.R.S. §48-3715(A) authorizes CAP to levy a General Ad Valorem tax up to 10 cents per \$100 of assessed valuation. The rate must be fixed by the third Monday in August each year.

The Board establishes property tax rates each year in June.

PREVIOUS BOARD ACTION/ACTIVITY:

| | |
|------------|---|
| June 2020 | Board Approved 2020/2021 tax rates |
| March 2021 | Staff held customer roundtable on stabilization funds |
| April 2021 | FAP Approved Preliminary Tax Rate Recommendation |

ISSUE SUMMARY/DESCRIPTION:

By statute, the counties must inform property owners of the assessed value of their properties by March of each year prior to the year the assessment takes effect (e.g., March 2021 for the tax year that begins July 1, 2022). The assessments are based on valuations from the middle of the previous calendar year (e.g., the valuation for the tax year beginning July 1, 2022, would be based on valuations from mid-2020). Valuations are approximately two years behind the pertinent tax year.

Taxes are based on Limited Property Value (LPV) and LPV is constrained to rise no more than 5% per year, although newly built property will be recorded at its actual Full Cash Value (FCV) for the initial year.

During this planning cycle, Elliot D. Pollack Co. was retained to assist in developing property tax valuation estimates for the next few years. Valuation estimates were slightly higher than last year's forecast in the near term. According to the Maricopa County Assessor's website, the median home LPV in the CAP service area is approximately \$200,000. Therefore, each penny of tax is equivalent to \$2.00 for homeowners annually..

Staff will present options that include various use of tax for the Ag Consideration, 2023 Repayment Obligations, and deposits into the Extraordinary Cost Reserve.

STAKEHOLDER PERSPECTIVES:

Staff have had brief conversations with AMWUA, in which these stakeholders wanted to express that the Federal Repayment was a top priority for CAP and that the application of tax toward this obligation was an appropriate use of tax revenues. They continue to support the practice of applying taxes to repayment two years into the future in order to allow their members to adequately plan their budgets.

SUGGESTED MOTION:

I move that the Board of Directors fix the CAWCD General Ad Valorem Tax Rate at ten cents (\$0.10) per one hundred dollars (\$100) of assessed valuation for the 2021/2022 tax year.

ATTACHMENTS:

None

Agenda Number 3.e.ii

CONTACT: Christopher Hall Doug Dunlap
623-869-2632 623-869-2360
chall@cap-az.com ddunlap@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: Fix the Water Storage Tax Rate and Adopt a Resolution Regarding the Use of the 2021/2022 Water Storage Tax Pursuant to A.R.S. §48-3715.02, Subsections B and C

RECOMMENDATION: The Finance, Audit and Power Committee recommends that the Board of Directors fix the CAWCD Water Storage Tax Rate at 4 cents (\$0.04) per one hundred dollars (\$100) of net assessed valuation (NAV) for the 2021/2022 tax year.

Furthermore, the FAP Committee recommends the Board adopt a resolution determining that all of the Water Storage tax levied in tax year 2021/2022, except for \$7 million requested by the AWBA for the purchase of long term storage credits in 2022, is required for CAP repayment or annual operations, maintenance and replacement costs, including CAWCD costs for AWBA M&I firming.

FISCAL IMPLICATIONS: Yes

Impact on Budget:

Each cent of ad valorem tax is estimated to generate approximately \$6 million in revenue in 2021/2022. If the Water Storage tax is assessed at the maximum level, this translates into \$24.0 million.

Additional spending authority requested: None

Impact on Reserves:

Collections less planned expenditures will increase Water Storage Tax Reserve by approximately \$17 million (\$24 million in revenues less \$7 million in expenditure).

Impact on Rates:

None

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

2022 CAWCD Board Strategic Plan

Finance: *Maintaining long-term financial strength to achieve CAP's goals and being prepared to address opportunities or challenges*

§A.R.S. 48-3715.02(B) authorizes CAP to levy a Water Storage tax up to four cents per \$100 of assessed valuation. The rate must be fixed by the third Monday in August each year.

§A.R.S. 48-3715.03(A) provides that the Board shall determine whether all or any portion of such tax is to be applied to the repayment of CAP construction or annual operations, maintenance and replacement costs. Any

taxes levied for Water Storage that are not applied to the repayment of CAP construction or annual operations, maintenance and replacement are to be deposited with the State Treasurer in the Arizona Water Banking Fund.

The Board establishes property tax rates each year in June.

PREVIOUS BOARD ACTION/ACTIVITY:

| | |
|------------|--|
| June 2020 | The Board approved 2020/2021 tax rates |
| March 2021 | Staff hosted roundtable on stabilization funds |
| April 2021 | FAP approved preliminary water storage tax rate and resolution |

ISSUE SUMMARY/DESCRIPTION:

By statute, the counties must inform property owners of the assessed value of their properties by March of each year prior to the year the assessment takes effect (e.g., March 2020 for the tax year that begins July 1, 2021). The assessments are based on valuations from the middle of the previous calendar year (e.g., the valuation for the tax year beginning July 1, 2021, would be based on valuations from mid-2019). Valuations are approximately two years behind the pertinent tax year.

During this planning cycle, the Elliot D. Pollack Co. was retained to assist in developing property tax valuation estimates for the next few years. Taxes are based on Limited Property Value (LPV) and LPV is constrained to rise no more than 5% per year, although newly built property will be recorded at its actual Full Cash Value (FCV) for the initial year.

Historically, the Board has levied the Water Storage Tax at the statutory maximum of 4 cents per \$100 of assessed valuation. At the maximum rate, the amounts collected in Pima and Pinal counties either just meet or cannot satisfy all of the M&I firming needs for those counties and are completely consumed. However, since CAWCD is only allowed to assess a single rate for all three counties, more is collected in Maricopa County than is needed for M&I firming in that county.

In November 2018, the Board approved the renewal of the intergovernmental agreement (IGA) among CAWCD, the Arizona Water Banking Authority and the Arizona Department of Water Resources. The agreement commenced on January 1, 2019 and will remain in effect until December 31, 2028.

Section 6(b) of the IGA states that CAWCD and AWBA agree to meet and confer periodically throughout the year regarding disbursement of tax revenues collected by CAWCD pursuant to A.R.S. §48-3715.02 for AWBA activities.

Section 6.2(b) requires the AWBA to include in its draft annual report, the estimated amount of revenues it will seek from the water storage tax for purchase of the projected target volume of long term storage credits (LTSCs) for CAP M&I firming, accounted for by the County, during the following calendar year. For 2021, the AWBA estimates the LTSCs purchases to be:

- Maricopa County –\$4 millionPima County -\$3 million
- The amount is subject to approval by the CAWCD Board at its June meeting of the CAWCD Board of Directors and will set forth in its annual resolution delivered to ADWR.

In addition, the Board may utilize these funds for operations and maintenance or repayment as there are many uncertainties in the near future.

The FAP Committee recommends that the Water Storage tax rate be kept at the statutory maximum of 4 cents for the 2021/2022 tax year, and the proceeds designated for OM&R and Repayment. The funds deposited in the CAP Water Storage Reserve are available for use by the AWBA for M&I Firming and available for the purchase of long-term storage credits.

SUGGESTED MOTION:

I move that the Board of Directors fix the CAWCD Water Storage Tax Rate at four cents (\$0.04) per one hundred dollars (\$100) of assessed valuation for the 2021/2022 tax year and adopt a resolution determining that all of the Water Storage tax levied in tax year 2021/2022, except for \$7 million requested by the AWBA for the purchase of long term storage credits in 2022, is required for CAP repayment or annual operations, maintenance and replacement costs, including CAWCD costs for AWBA M&I firming.

ATTACHMENTS:

1. Water Storage Tax Resolution 2021

RESOLUTION OF THE BOARD OF DIRECTORS
OF THE
CENTRAL ARIZONA WATER CONSERVATION DISTRICT
REGARDING AD VALOREM TAX FOR WATER STORAGE

(June 10, 2021)

WHEREAS, House Bill 2494 adopted by the Arizona Legislature in 1996 (Chapter 308, Laws of Arizona 1996, Forty-second Legislature, Second Regular Session) established the Arizona Water Bank and amended A.R.S. § 48-3715.02 relating to the tax levy for water storage; and

WHEREAS, A.R.S. § 48-3715.02, subsection B, provides that the Central Arizona Water Conservation District ("CAWCD" or "the District") acting through its Board of Directors (the "Board"), shall fix the amount to be raised by direct taxation pursuant to its provisions, which amount shall not exceed four cents per one hundred dollars of assessed valuation (the "Water Storage Tax"); and

WHEREAS, the Board by separate action has fixed the tax rate pursuant to A.R.S. §48-3715.02, subsection B, for the 2021/2022 tax year at four cents per one hundred dollars of assessed valuation; and

WHEREAS, A.R.S. § 48-3715.03 further provides that the Board shall annually determine by resolution whether any or all of the Water Storage Tax shall be applied to the repayment of the construction costs of the Central Arizona Project (the "Project") or to the annual operation, maintenance, and replacement costs of the Project; and

WHEREAS, A.R.S. § 48-3715.03 further provides that those monies specified in the resolution for repayment of the construction costs or payment of the annual operation, maintenance, and replacement costs of the Project shall be deposited, pursuant to A.R.S. §§35-146 and 35-147, in the District fund established pursuant to A.R.S. § 48-3712, subsection A, paragraph

5; and

WHEREAS, A.R.S. § 48-3715.03 further provides that any Water Storage Tax receipts that are not deposited in the District fund shall be deposited, pursuant to A.R.S. §§ 35-146 and 35-147, in the Arizona Water Banking Fund established pursuant to A.R.S. § 45-2425; and

WHEREAS, in accordance with the Intergovernmental Agreement Among Arizona Department of Water Resources, Arizona Water Banking Authority (“AWBA”) and CAWCD dated January 3, 2019, the AWBA notified the District on March 24, 2021 that the estimated revenues it is seeking from the Water Storage Tax for the purchase of LTSCs for CAP M&I firming, accounted for by County, during calendar year 2022 are \$4,000,000 for a target amount of 18,341 AF in the Phoenix AMA and \$3,000,000 for a target amount of 13,623 AF in the Tucson AMA for a total amount of \$7,000,000; and

WHEREAS, the AWBA requests that the Water Storage Tax revenues be made available by the Board for AWBA's use to purchase these LTSCs at such time when the AWBA enters into an agreement for the purchase of LTSCs utilizing Water Storage Tax revenues and the agreements have been approved by the AWBA Commission; and

WHEREAS, the Board desires to authorize \$4,000,000 of the Water Storage Tax revenues collected in Maricopa County for the 2021/2022 tax year and \$3,000,000 of the Water Storage Tax revenues collected in Pima County for the 2021/2022 tax year be available to the Arizona Water Banking Fund at such time when the AWBA enters into an agreement for the purchase of LTSCs utilizing Water Storage Tax revenues and the agreements have been approved by the AWBA Commission; and

WHEREAS, in accordance with the IGA, the Board may authorize and set forth the amount available for transfer to the AWBA in the annual resolution it adopts at its June meeting of the

CAWCD Board of Directors and to direct the transfer of Water Storage Tax revenues to the Arizona Water Banking Fund; and

WHEREAS, in accordance with the IGA, the AWBA will provide notice to CAWCD specifying the total price paid for the LTSCs along with a copy of the signed purchase agreement; and

WHEREAS, A.R.S. § 48-3715.03 further provides that a certified copy of such resolution shall be delivered to the Arizona Department of Water Resources.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Central Arizona Water Conservation, as follows:

1. That all of the taxes levied pursuant to A.R.S. § 48-3715.02, subsections B and C, herein referred to as the Water Storage Tax, in the 2021/2022 tax year, except as provided in paragraph 3 below, shall be applied to repayment of the construction costs or payment of the annual operation, maintenance, and replacement costs of the Project, including underground storage for the purpose of M&I firming by the Arizona Water Banking Authority; and
2. That all taxes levied pursuant to A.R.S. § 48-3715.02, subsections B and C, in the 2021/2022 tax year be deposited in a designated District account in the District fund established pursuant to A.R.S. § 48-3712, subsection A, paragraph 5; and
3. That up to \$4,000,000 of the Water Storage Tax, collected in Maricopa County, in the 2021/2022 tax year and up to \$3,000,000 of the Water Storage Tax, collected in Pima County, is authorized and shall be available to the AWBA for the purchase of LTSCs at such time there are transactions requiring funding; and
4. That the specific amount of the total purchase price paid for the LTSCs, up to the authorized amount of the Water Storage Tax stated in paragraph 3 above, be transferred and deposited in the Arizona Water Banking Fund established

- pursuant to A.R.S. §45-2425 upon receipt by CAWCD of any such agreement that is approved by the AWBA Commission for the purchase of LTSCs; and
5. That any remaining authorized amounts made available to the AWBA that are not transferred and deposited in the Arizona Water Banking Fund will carry over to be credited against future requests by the AWBA and remain available to be used for the purchase of LTSCs in subsequent years; and
 6. That a certified copy of this resolution be delivered to the Arizona Department of Water Resources.

I, the undersigned, as Secretary of the Central Arizona Water Conservation District, hereby certify that the foregoing is a true and correct copy of the resolutions duly adopted by the Board of Directors of the Central Arizona Water Conservation District at a meeting thereof, duly called and held on June 10, 2021, at which a quorum was present and acting throughout. I further certify that said resolutions have not been modified or revoked since their adoption and are still in full force and effect.

SIGNED THIS 10th DAY OF JUNE 2021.

By: _____
Alexandra Arboleda
Secretary

ACTION BRIEF

BOARD OF DIRECTORS



Agenda Number 3.f.i

CONTACT: Doug Dunlap
623-869-2360
ddunlap@cap-az.com

Christopher Hall
623-869-2632
chall@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: 2022-2026 Water Delivery and Capital Charge Rate Schedule

RECOMMENDATION: The FAP Committee recommends that the Board approve the attached Final Water Rate Schedule for 2022-2026.

FISCAL IMPLICATIONS: Yes

Impact on Budget:

CAWCD delivery and capital charge rates are included in the 2021 budget.

Additional spending authority requested: None

Impact on Reserves:

This recommendation will reduce Working Capital Reserves as previously forecasted in the budget as all unapplied taxes were assumed to go into Working Capital. Working Capital Reserves will remain above target. The Extraordinary Cost Reserve will increase by approximately \$45 million.

Impact on Rates:

None

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

2022 CAWCD Board Strategic Plan

Finance: *Maintaining long-term financial strength to achieve CAP's goals and being prepared to address opportunities or challenges*

PREVIOUS BOARD ACTION/ACTIVITY:

| | |
|----------------|--|
| June 4, 2020 | The Board approved the Final 2021 – 2026 CAWCD Rate Schedule including Provisional rates for 2022 and Advisory rates for 2023 through 2026 |
| March 29, 2021 | Staff held a Customer Workshop on utilization of rate stabilization reserves. |
| April 15, 2021 | The FAP Committee recommended the Board approve the attached rate schedule. |

ISSUE SUMMARY/DESCRIPTION:

As provided in the District's rate setting policy, rates are set in even-numbered years with a firm rate for the next year, a provisional rate for the second year and advisory rates for the next 4 years. In odd-numbered years, the provisional rates are reviewed to determine if updates are needed for the provisional and advisory rates. If a change is not required, the provisional rates can become firm for the next year without Board action.

The CAWCD policy provides for a stakeholder briefing in mid-April, review and development of a recommendation at the April Finance, Audit and Power Committee meeting, adoption of preliminary rates at the May Board meeting and approval of a final water rate schedule in June.

In the odd-year, rates are reviewed for any key changes to determine if the rates need to be revised. Due to the probable Tier 1 shortage in 2022, it is necessary to revise the 2022 Final and 2023-2026 advisory rates. Advisory Tier 1 rates were provided in the previous rate schedule.

Water Volumes: Water volumes have been revised to a Tier 1 level for 2022-2026. Additional information has been provided for additional DCP Tier levels for planning purposes. Water volumes decreased slightly due to operational impacts from 2020.

Power: Purchase power costs for 2022 forward are based on approximately 25 percent long-term contracts and approximately 75 percent market purchases.

Wheeling: Starts in 2023 at 3,000 acre-feet/year and increases to 4,000 acre-feet in 2024 and remains at that level.

Non-Indian Ag (NIA) Reallocation: The reserve forecast anticipates the influx of approximately \$19.5 million per year for 5 year in back capital charges and interest, resulting from the allocation of the 46,629 AF of Non-Indian Agricultural (NIA) water, in 2021 for delivery in 2022. Also, water volumes and customer deliveries as well as capital charges are impacted by this reallocation.

Ag Programs: Fixed OM&R is covered through general ad valorem taxes for the Ag Settlement pool. No additional incentives or discounts are proposed. Rates are exclusive of any Ag Forbearance program benefits.

DCP Mitigation: Additional costs and water volumes Arizona's Implementation plan have not been included in the forecast. As these specifics will be defined in the coming months, the goal is to have balancing amounts of compensated mitigation and additional volumes so as to not impact the Fixed OM&R rate.

Water Delivery Rates: Overall, the water delivery rates remain the same as the Tier 1 rates provided in 2020. Due to the change in water volumes, Fixed O& M increased slightly in 2022 and 2023. "Big R" was decreased by an equivalent amount in the same years as a result of the delay of capital projects due to COVID-19 and some reevaluation of some Extraordinary Maintenance projects. All other rates remain the same as the provisional rates.

Full Rate Stabilization Rate: This rate is a reduction in the Fixed OM&R rate as a result of previous rate payer contributions into the Full Rate Stabilization Program. All deliveries are eligible for this reduction. The proposal is a result of feedback from the Customer Roundtable.

2020 Voluntary Rate Stabilization: This rate is a reduction in the Energy rate as a result of previous rate payer contributions into the Voluntary Supplemental Shortage Stabilization Program. CAWCD made some partial matching contributions into this program. Only those entities that opted-in to the program are eligible for this reduction. The proposal is a result of feedback from the Customer Roundtable.

Capital Charges: Capital charges provide a funding source for the make-up payment to the federal government for the annual repayment. The current Board direction is to collect enough in capital charges to cover the estimated make-up payment with annual discussions of how much, if any, taxes will be utilized for

repayment to subsequently reduce capital charges. Currently, 2.5¢ of 2020/21 General ad valorem taxes have previously been applied to 2022 repayment which results the current capital charge rate of \$50/acre-foot. The FAP Committee took up the discussion of utilizing 10-cent taxes for 2023 repayment and recommended to apply 1.5-cents. The result is a decrease in the capital charge from \$69/acre-foot to \$56/acre-foot.

STAKEHOLDER PERSPECTIVES:

Staff held a Shortage Rate Stabilization Roundtable on March 25, 2021. There were several alternatives presented for discussion of usage of both the Full Rate Stabilization Program and the Voluntary 2020 Program. There was pretty solid consensus on the Full Rate Stabilization program - split the total estimate of \$25/acre-foot into \$13/acre-foot in 2022 and \$12/acre-foot in 2023. The voluntary 2020 program had a few differing thoughts on the usage of the approximately \$11/acre-foot available. The majority view was to utilize \$11/acre-foot in 2024 though potentially revisit the topic next year when there is more visibility of 2023 and 2024 conditions. It was clarified that the last year of the funds are an estimate and will be adjusted to utilize the remaining funds in each of the programs.

SUGGESTED MOTION:

I move that the Board approve the CAP Final 2022-2026 Water Rate Schedule as attached to this brief.

ATTACHMENTS:

1. Final CAWCD 2022-2026 Water Rate Schedule

**CENTRAL ARIZONA PROJECT
FINAL 2022-2026 RATE SCHEDULE**

June 10, 2021

DELIVERY RATES FOR VARIOUS CLASSES OF WATER SERVICE

Units = \$/ acre-foot

(The Letter Designations in the Formulas Refer to the Rate Components Shown Below)

| DCP Tier | | T0 Firm 2021 | T1 Firm 2022 | T1 2023 | T1 Advisory 2024 | T1 2025 | T1 2026 |
|---|--------|--------------------|--------------------|------------|------------------------|------------|------------|
| | 2020 | | | | | | |
| Municipal and Industrial Subcontract (B+C) ^{6,7} | \$ 155 | \$ 160 | \$ 192 | \$ 200 | \$ 214 | \$ 222 | \$ 225 |
| Federal Contract (B+C) ^{6,7} | \$ 155 | \$ 160 | \$ 192 | \$ 200 | \$ 214 | \$ 222 | \$ 225 |
| Agricultural Settlement Pool (C) ¹ | \$ 56 | \$ 56 | \$ 56 | \$ 57 | \$ 61 | \$ 61 | \$ 63 |
| Excess (A+B+C) ^{2,6} | \$ 211 | \$ 213 | \$ 242 | \$ 256 | \$ 284 | \$ 290 | \$ 291 |
| Interstate (A+B+C+D) | TBD | TBD | TBD | TBD | TBD | TBD | TBD |

RATE COMPONENTS

Units = \$/acre-foot

| | 2020 | Firm 2021 | Firm 2022 | 2023 | Advisory 2024 | 2025 | 2026 |
|---|-------|--------------|--------------|---------|------------------|--------|--------|
| <u>Capital Charges</u> | | | | | | | |
| (A) Municipal and Industrial - Long Term Subcontract ³ | \$ 56 | \$ 53 | \$ 50 | \$ 56 | \$ 70 | \$ 68 | \$ 66 |
| <u>Delivery Charges</u> | | | | | | | |
| Fixed O&M ⁴ | 75 | 78 | 103 | 105 | 112 | 120 | 121 |
| "Big R" ⁴ | 24 | 26 | 33 | 38 | 41 | 41 | 41 |
| (B) Fixed OM&R ⁴ | \$ 99 | \$ 104 | \$ 136 | \$ 143 | \$ 153 | \$ 161 | \$ 162 |
| (C) Pumping Energy Rate ⁵ | \$ 56 | \$ 56 | \$ 56 | \$ 57 | \$ 61 | \$ 61 | \$ 63 |
| (D) Property Tax Equivalency | TBD | TBD | TBD | TBD | TBD | TBD | TBD |
| (E) Full Rate Stabilization ⁶ | \$ - | \$ - | \$ (13) | \$ (12) | \$ - | \$ - | \$ - |
| (F) 2020 Voluntary Rate Stabilization ⁷ | \$ - | \$ - | \$ - | \$ - | \$ (11) | \$ - | \$ - |

DIRECT UNDERGROUND WATER STORAGE

Units = \$/acre-foot

| | 2020 | Firm 2021 | Firm 2022 | 2023 | Advisory 2024 | 2025 | 2026 |
|--|-------|--------------|--------------|-------|------------------|-------|-------|
| <u>Underground Water Storage O&M⁸</u> | | | | | | | |
| Phoenix AMA | \$ 13 | \$ 13 | \$ 13 | \$ 13 | \$ 14 | \$ 14 | \$ 15 |
| Tucson AMA | 15 | 15 | 15 | 15 | 15 | 15 | 15 |
| <u>Underground Water Storage Capital Charge⁹</u> | | | | | | | |
| Phoenix AMA | \$ 15 | \$ 15 | \$ 15 | \$ 15 | \$ 15 | \$ 15 | \$ 15 |
| Tucson AMA | 9 | 9 | 9 | 9 | 9 | 9 | 9 |

**CENTRAL ARIZONA PROJECT
FINAL 2022-2026 RATE SCHEDULE**

June 10, 2021

NOTES:

- 1) Rate is the Pumping Energy Rate component.
- 2) Excess water is administered via Board Policy "Procedure For Distributing CAP Excess Water and Turn-Back Water for the Period of 2020 Through 2024".
- 3) For M&I use water, the Capital Charge is paid on full allocation regardless of amount delivered and is not included in delivery rates. The Capital Charge rate is impacted by the following:
 - 2021 - 1-cent of 2019/20 property taxes were approved to be applied to the federal repayment by the CAWCD Board in 2019. An additional 2- cents of property taxes are being applied to the federal repayment from the 2020/21 property taxes, resulting in a reduction of \$26/AF.
 - 2022 - 2 1/2 cents of 2020/21 property taxes are being applied to the federal repayment, resulting in a reduction of \$21/AF.
- 4) Fixed OM&R charge consists of Fixed O&M and "Big R" (Water delivery capital, large extraordinary maintenance projects and bond debt service). Debt service on CAP's Water Delivery O&M Revenue Bonds, Series 2016 is about \$3.6 million annually and is included in "Big R". This rate is collected on all ordered water whether delivered or not.
- 5) The pumping energy rate applies to all actual water volumes delivered as opposed to scheduled.
- 6) If Tier 1 or higher occurs, the Full Rate Stabilization takes effect, resulting in a reduction in the Fixed OM&R rate. Posted rates do not include this reduction. This is a customer funded program.
- 7) If Tier 1 or higher occurs, the 2020 Voluntary Rate Stabilization program takes effect for those entities participating, resulting in a reduction in the Energy rate. Posted rates do not include this reduction. This is a customer funded program.
- 8) Underground Water Storage O&M is paid by all direct recharge customers using CAP recharge sites.
- 9) Underground Water Storage Capital Charge is paid by all direct recharge customers except AWBA for M&I firming, the CAGR, municipal providers within the CAP service area and co-owners of CAWCD recharge facilities using no more than their share of capacity.

Key Assumptions

- Non-Indian Ag reallocation occurs in 2021 for 2022 deliveries
- Wheeling starts in 2023 at 3,000 acre-foot/year and increases to 4,000 acre-foot/year in 2024 and remains at that level
- Rates are in accordance with Arizona Implementation Plan for Drought Contingency Plan

FIXED OM&R RATE AT DCP TIERS (For Planning Purposes Only)

Units = \$/ acre-foot

| | Firm | Advisory | | | |
|---------|-------------|-------------|-------------|-------------|-------------|
| | <u>2022</u> | <u>2023</u> | <u>2024</u> | <u>2025</u> | <u>2026</u> |
| Normal | \$ 102 | \$ 107 | \$ 113 | \$ 119 | \$ 120 |
| Tier 0 | \$ 109 | \$ 114 | \$ 121 | \$ 127 | \$ 128 |
| Tier 1 | \$ 136 | \$ 143 | \$ 153 | \$ 161 | \$ 162 |
| Tier 2a | \$ 146 | \$ 155 | \$ 165 | \$ 173 | \$ 174 |
| Tier 2b | \$ 152 | \$ 162 | \$ 172 | \$ 181 | \$ 182 |
| Tier 3 | \$ 164 | \$ 176 | \$ 186 | \$ 196 | \$ 197 |

Rates are net of rate stabilization

ACTION BRIEF

BOARD OF DIRECTORS



Agenda Number 3.f.ii

CONTACT: Doug Dunlap
623-869-2360
ddunlap@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: 2021/22 - 2025/26 CAGR D Rate Schedule, including collection of annual membership dues

RECOMMENDATION: The CAGR D and Underground Storage Committee recommend that the Board approve the Final CAGR D Rate Schedule for 2021/2022 through 2025/26, including the collection of annual membership dues.

FISCAL IMPLICATIONS: Yes

Impact on Budget:

Collection of rates, fees and dues in 2021/22 are currently in the CAGR D 2020/2021 budget and will impact the 2022/2023 budget.

Additional spending authority requested:

Impact on Reserves:

Collection of rates, fees and dues in 2021/22 are currently in the CAGR D 2020/2021 budget and will impact the 2022/2023 budget.

Impact on Rates:

None

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

2022 CAWCD Board Strategic Plan

Finance: *Maintaining long-term financial strength to achieve CAP's goals and being prepared to address opportunities or challenges*

Groundwater Replenishment: *Fulfilling CAP's groundwater replenishment responsibilities in accordance with statutory requirements*

PREVIOUS BOARD ACTION/ACTIVITY:

| | |
|----------------|--|
| June 4, 2020 | The Board approved the Final 2020/21 – 2025/26 CAGR D Rate Schedule including Provisional rates for 2021/2022 and Advisory rates for 2023/24 through 2025/26 |
| April 15, 2021 | The CAGR D and Underground Storage Committee recommended that the Board approve Preliminary CAGR D Rate Schedule for 2021/2022 through 2025/2026, Including Collection of Annual Membership Dues |

ISSUE SUMMARY/DESCRIPTION:

This is the second year in the rate cycle. The probable Tier 1 shortage for CAWCD have necessitated revising the 2021/2022 provisional rates and the advisory rates for 2022/23 through 2025/26. The Policy calls

for Board adoption of a preliminary CAGR rate schedule in May and approval of a final CAGR rate schedule in June. The attached rate schedule was prepared based on existing policies, a consistent methodology from 2020/21, updated obligation projections (lower than 2015 Plan of Operation projections and lower than the 2020/21 rate case) and the CAWCD Preliminary Rate Schedule recommended by the FAP Committee on April 15, 2021. Any change in the CAWCD Preliminary Rates will impact the CAGR rates.

The preliminary Tier 1 2021/22 Phoenix AMA Total Assessment Rate (composite rate) is lower than the previous Tier 1 provisional rates and the same for both the Pinal and Tucson AMA Tier 1 Composite Rates.

The Water & Replenishment rate component decreased in the Phoenix AMA and was unchanged in the Pinal and Tucson AMAs. This rate component increases through time with standard CAWCD price projections.

The Replenishment Reserve rate component is consistent with the previous Provisional Tier 1 rate for all AMAs and also increases through time based on standard CAWCD price projections. At these rates, the Replenishment Reserve will continue to contribute to the replenishment reserve at 2.5%-3.0% per year of the target to stay at or above cumulative goal to demonstrate progress to the target.

The Infrastructure & Water Rights rate component is consistent with the previous provisional rate and currently meets projected infrastructure and water right costs.

The Administrative rate component is based on the cost of administrative support to operate the CAGR exclusive of any direct I&WR administrative costs and spread across the forecasted obligation. For 2021/22 through 2023/24, the Administrative rate component is consistent with the provisional rates, but increases in the 2024/25 and 2025/26 advisory rates due to decrease obligation projections.

Enrollment and Activation fees are in alignment with the 2019 agreement in which Activation Fees increase at 9%/yr & Enrollment Fees and minimum Activation Fees increase at 7%/yr through 2023/2024 pursuant to prior discussions with stakeholders and the Committee. There are no changes to these fees.

Annual Membership Dues (AMDs) are set at the maximum allowed by state statute for all years. AMDs are lower than the provisional and advisory rates based on lower obligation projections. Lower projections decrease the total Infrastructure & Water Right collections and AMDs can be no more than 25% of total I&WR projected collection.

SUGGESTED MOTION:

I move that the Board of Directors approve the CAGR Final Rate Schedule for 2021/22 through 2025/26, including the collection of annual membership dues.

ATTACHMENTS:

1. Final CAGR 2021/22 - 2025/26 Water Rate Schedule

**CENTRAL ARIZONA GROUNDWATER REPLENISHMENT DISTRICT
FINAL CAGRD 2021/2022 - 2025/2026 RATE SCHEDULE**

June 10, 2021

CENTRAL ARIZONA GROUNDWATER REPLENISHMENT DISTRICT ASSESSMENT RATES

Units = \$/acre-foot

| | <u>2019/20</u> | <u>Firm</u> <u>2020/21</u> | <u>Firm</u> <u>2021/22</u> | <u>Advisory</u> | | | |
|--|----------------|-------------------------------|-------------------------------|-----------------|----------------|----------------|----------------|
| | | | | <u>2022/23</u> | <u>2023/24</u> | <u>2024/25</u> | <u>2025/26</u> |
| <u>Phoenix Active Management Area</u> | | | | | | | |
| Water & Replenishment Component ¹ | \$ 238 | \$ 239 | \$ 251 | \$ 266 | \$ 294 | \$ 300 | \$ 299 |
| Administrative Component ² | 41 | 47 | 50 | 49 | 48 | 48 | 48 |
| Infrastructure & Water Rights Component ³ | 353 | 353 | 353 | 353 | 353 | 353 | 353 |
| Replenishment Reserve Charge ⁴ | 95 | 103 | 114 | 120 | 133 | 135 | 136 |
| Total Assessment Rate (\$/AF) | \$ 727 | \$ 742 | \$ 768 | \$ 788 | \$ 828 | \$ 836 | \$ 836 |
| <u>Pinal Active Management Area</u> | | | | | | | |
| Water & Replenishment Component ¹ | \$ 211 | \$ 243 | \$ 272 | \$ 287 | \$ 316 | \$ 322 | \$ 323 |
| Administrative Component ² | 41 | 47 | 50 | 49 | 48 | 48 | 48 |
| Infrastructure & Water Rights Component ³ | 353 | 353 | 353 | 353 | 353 | 353 | 353 |
| Replenishment Reserve Charge ⁴ | 103 | 103 | 114 | 120 | 133 | 135 | 136 |
| Total Assessment Rate (\$/AF) | \$ 708 | \$ 746 | \$ 789 | \$ 809 | \$ 850 | \$ 858 | \$ 860 |
| <u>Tucson Active Management Area</u> | | | | | | | |
| Water & Replenishment Component ¹ | \$ 242 | \$ 243 | \$ 272 | \$ 287 | \$ 316 | \$ 322 | \$ 323 |
| Administrative Component ² | 41 | 47 | 50 | 49 | 48 | 48 | 48 |
| Infrastructure & Water Rights Component ³ | 353 | 353 | 353 | 353 | 353 | 353 | 353 |
| Replenishment Reserve Charge ⁴ | 102 | 103 | 114 | 120 | 133 | 135 | 136 |
| Total Assessment Rate (\$/AF) | \$ 738 | \$ 746 | \$ 789 | \$ 809 | \$ 850 | \$ 858 | \$ 860 |
| <u>Contract Replenishment Tax - Scottsdale</u> ⁵ | | | | | | | |
| Cost of Water | \$ 199 | \$ 211 | \$ 213 | \$ 242 | \$ 256 | \$ 284 | \$ 290 |
| Cost of Transportation | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. |
| Cost of Replenishment | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. |
| Administrative Component ² | 41 | 47 | 50 | 49 | 48 | 48 | 48 |
| Total Tax Rate (\$/AF) | \$ 240 | \$ 258 | \$ 263 | \$ 291 | \$ 304 | \$ 332 | \$ 338 |

ENROLLMENT & ACTIVATION FEES

Units = \$/Unit

| | | | | | | | |
|--|----------|----------|----------|----------|----------|-----|-----|
| Enrollment Fee - Commercial Subdivisions ⁶ | \$ 1,094 | \$ 1,184 | \$ 1,205 | \$ 1,307 | \$ 1,422 | TBD | TBD |
| Enrollment Fee ⁷ | \$ 284 | \$ 304 | \$ 325 | \$ 347 | \$ 372 | TBD | TBD |
| Activation Fee - Minimum ⁸ | \$ 282 | \$ 302 | \$ 323 | \$ 345 | \$ 369 | TBD | TBD |
| Activation Fee - Phoenix AMA ⁸ | \$ 1,080 | \$ 1,180 | \$ 1,290 | \$ 1,400 | \$ 1,520 | TBD | TBD |
| Activation Fee - Pinal Post-2007 ⁸ | \$ 1,080 | \$ 1,180 | \$ 1,290 | \$ 1,400 | \$ 1,520 | TBD | TBD |
| Activation Fee - Tucson AMA ⁸ | \$ 810 | \$ 880 | \$ 880 | \$ 960 | \$ 1,050 | TBD | TBD |

ANNUAL MEMBERSHIP DUES

| | | | | | | | |
|---|----------|----------|----------|-----------|-----------|-----------|-----------|
| <u>Member Land Annual Membership Dues (\$/Lot)</u> ⁹ | | | | | | | |
| Phoenix Active Management Area | \$ 28.59 | \$ 25.78 | \$ 25.46 | \$ 27.09 | \$ 28.84 | \$ 29.76 | \$ 30.38 |
| Pinal Active Management Area | \$ 19.36 | \$ 18.65 | \$ 18.90 | \$ 20.63 | \$ 22.55 | \$ 23.89 | \$ 25.04 |
| Tucson Active Management Area | \$ 31.04 | \$ 29.24 | \$ 29.07 | \$ 31.13 | \$ 33.35 | \$ 34.64 | \$ 35.58 |
| <u>Member Service Area Annual Membership Dues (\$/AF)</u> ⁹ | | | | | | | |
| | \$ 97.22 | \$ 93.73 | \$ 95.51 | \$ 104.91 | \$ 115.40 | \$ 123.05 | \$ 129.84 |

**CENTRAL ARIZONA GROUNDWATER REPLENISHMENT DISTRICT
FINAL CAGRD 2021/2022 - 2025/2026 RATE SCHEDULE**

June 10, 2021

NOTES:

- 1) The Water & Replenishment Component covers the projected annual costs of satisfying replenishment obligations, including the purchase of long-term storage credits (LTSC) and the purchase and replenishment of water.
- 2) The Administrative Component covers CAGRD administrative costs except labor-related costs associated with the acquisition of infrastructure and water rights. \$2/AF has been added to this component to fund the Board's CAGRD conservation program.
- 3) The Infrastructure & Water Rights Component covers the cost to acquire water supplies, the cost to construct and maintain infrastructure as the need arises and the cost of labor-related costs associated with the acquisition of infrastructure and water rights..
- 4) The Replenishment Reserve Charge covers costs associated with establishing a replenishment reserve of LTSCs as provided in ARS Sections 48-3774.01 and 48-3780.01.
- 5) The components of the Contract Replenishment Tax - Scottsdale reflect the provisions in the Water Availability Status Contract to Replenish Groundwater between CAWCD and Scottsdale.
- 6) Enrollment Fees for Commercial Subdivisions are established per the November 5, 2015 CAP Board Amended Enrollment Fee and Activation Fee Policy. Enrollment Fees for Commercial Subdivisions are phased in over a two year period and starting in the 2018/2019 fiscal year forward, are equal to the Member Land Enrollment Fee plus the Tucson AMA Activation Fee. If a Commercial Subdivision enrolls with more than 50 parcels, then the Commercial Subdivision Enrollment Fee applies on the first 50 parcels, and only the Member Land Enrollment Fee applies to the number of parcels over 50.
- 7) The Enrollment Fee is collected pursuant to the CAGRD Enrollment Fee and Activation Fee Policy adopted by the Board on May 1, 2008. A \$2 per housing unit fee is included in the Enrollment Fee to help fund CAGRD's conservation program.
- 8) The Activation Fees are in accordance with the Preliminary 2014/15 - 2019/20 CAGRD Activation fee schedule adopted by the Board on November 7, 2013.
- 9) The Annual Membership Dues for Member Lands and Member Service Areas are pursuant to ARS Sections 48-3772.A.8. and 48-3779 as well as the Policy on Collection of CAGRD Annual Membership Dues adopted by the Board on April 7, 2011.

ASSUMPTIONS:

- Annual Membership Dues (AMDs) are set at the maximum allowed by state statutes for all years
- Water Replenishment & Replenishment Reserve rates are dependent on CAWCD rates

CENTRAL ARIZONA GROUNDWATER REPLENISHMENT DISTRICT
FINAL CAGRD 2021/2022 - 2025/2026 RATE SCHEDULE

June 10, 2021

Shortage Rates - for planning purposes

All other rates remain the same

Excludes any rate stabilization

| | | Provisional | | Advisory | | |
|--|-----------|-------------|---------|----------|---------|---------|
| | | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 |
| Water & Replenishment Component | | | | | | |
| Phoenix AMA | Normal | \$ 217 | \$ 230 | \$ 254 | \$ 258 | \$ 257 |
| Phoenix AMA | Tier Zero | \$ 224 | \$ 237 | \$ 262 | \$ 266 | \$ 265 |
| Phoenix AMA | Tier 1 | \$ 251 | \$ 266 | \$ 294 | \$ 300 | \$ 299 |
| Phoenix AMA | Tier 2a | \$ 261 | \$ 275 | \$ 306 | \$ 312 | \$ 310 |
| Phoenix AMA | Tier 2b | \$ 267 | \$ 282 | \$ 313 | \$ 320 | \$ 319 |
| Phoenix AMA | Tier 3 | \$ 279 | \$ 295 | \$ 327 | \$ 335 | \$ 334 |

Replenishment Reserve Charge

| | | | | | | |
|-------------|-----------|--------|--------|--------|--------|--------|
| Phoenix AMA | Normal | \$ 98 | \$ 103 | \$ 114 | \$ 115 | \$ 116 |
| Phoenix AMA | Tier Zero | \$ 103 | \$ 108 | \$ 120 | \$ 121 | \$ 122 |
| Phoenix AMA | Tier 1 | \$ 114 | \$ 120 | \$ 133 | \$ 135 | \$ 136 |
| Phoenix AMA | Tier 2a | \$ 119 | \$ 124 | \$ 139 | \$ 141 | \$ 141 |
| Phoenix AMA | Tier 2b | \$ 122 | \$ 127 | \$ 142 | \$ 144 | \$ 145 |
| Phoenix AMA | Tier 3 | \$ 127 | \$ 134 | \$ 149 | \$ 151 | \$ 152 |

Water & Replenishment Component

| | | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 |
|-----------|-----------|---------|---------|---------|---------|---------|
| Pinal AMA | Normal | \$ 238 | \$ 251 | \$ 276 | \$ 280 | \$ 281 |
| Pinal AMA | Tier Zero | \$ 245 | \$ 258 | \$ 284 | \$ 288 | \$ 289 |
| Pinal AMA | Tier 1 | \$ 272 | \$ 287 | \$ 316 | \$ 322 | \$ 323 |
| Pinal AMA | Tier 2a | \$ 282 | \$ 296 | \$ 328 | \$ 334 | \$ 334 |
| Pinal AMA | Tier 2b | \$ 288 | \$ 303 | \$ 335 | \$ 342 | \$ 343 |
| Pinal AMA | Tier 3 | \$ 300 | \$ 316 | \$ 349 | \$ 357 | \$ 358 |

Replenishment Reserve Charge

| | | | | | | |
|-----------|-----------|--------|--------|--------|--------|--------|
| Pinal AMA | Normal | \$ 98 | \$ 103 | \$ 114 | \$ 115 | \$ 116 |
| Pinal AMA | Tier Zero | \$ 101 | \$ 106 | \$ 118 | \$ 119 | \$ 120 |
| Pinal AMA | Tier 1 | \$ 114 | \$ 120 | \$ 133 | \$ 135 | \$ 136 |
| Pinal AMA | Tier 2a | \$ 119 | \$ 124 | \$ 139 | \$ 141 | \$ 141 |
| Pinal AMA | Tier 2b | \$ 121 | \$ 127 | \$ 142 | \$ 144 | \$ 145 |
| Pinal AMA | Tier 3 | \$ 127 | \$ 134 | \$ 149 | \$ 151 | \$ 152 |

Water & Replenishment Component

| | | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 |
|------------|-----------|---------|---------|---------|---------|---------|
| Tucson AMA | Normal | \$ 238 | \$ 251 | \$ 276 | \$ 280 | \$ 281 |
| Tucson AMA | Tier Zero | \$ 245 | \$ 258 | \$ 284 | \$ 288 | \$ 289 |
| Tucson AMA | Tier 1 | \$ 272 | \$ 287 | \$ 316 | \$ 322 | \$ 323 |
| Tucson AMA | Tier 2a | \$ 282 | \$ 296 | \$ 328 | \$ 334 | \$ 334 |
| Tucson AMA | Tier 2b | \$ 288 | \$ 303 | \$ 335 | \$ 342 | \$ 343 |
| Tucson AMA | Tier 3 | \$ 300 | \$ 316 | \$ 349 | \$ 357 | \$ 358 |

Replenishment Reserve Charge

| | | | | | | |
|------------|-----------|--------|--------|--------|--------|--------|
| Tucson AMA | Normal | \$ 98 | \$ 103 | \$ 114 | \$ 115 | \$ 116 |
| Tucson AMA | Tier Zero | \$ 101 | \$ 106 | \$ 118 | \$ 119 | \$ 120 |
| Tucson AMA | Tier 1 | \$ 114 | \$ 120 | \$ 133 | \$ 135 | \$ 136 |
| Tucson AMA | Tier 2a | \$ 119 | \$ 124 | \$ 139 | \$ 141 | \$ 141 |
| Tucson AMA | Tier 2b | \$ 121 | \$ 127 | \$ 142 | \$ 144 | \$ 145 |
| Tucson AMA | Tier 3 | \$ 127 | \$ 134 | \$ 149 | \$ 151 | \$ 152 |

ACTION BRIEF

BOARD OF DIRECTORS



Agenda Number 3.f.iii

CONTACT: Doug Dunlap
623-869-2360
ddunlap@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: 2022-2026 Underground Water Storage Rate Schedule

RECOMMENDATION: The CAGRD and Underground Storage Committee recommend that the Board approve the attached Final Underground Water Storage O&M and Underground Water Storage Capital Charge Rate Schedule for 2022-2026.

FISCAL IMPLICATIONS: Yes

Impact on Budget:

Collection of Underground Water Storage revenue is currently in the CAWCD budget.

Additional spending authority requested: None

Impact on Reserves:

Collection of Underground Water Storage revenue is currently in the CAWCD budget.

Impact on Rates:

None

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

2022 CAWCD Board Strategic Plan

Finance: *Maintaining long-term financial strength to achieve CAP's goals and being prepared to address opportunities or challenges*

PREVIOUS BOARD ACTION/ACTIVITY:

| | |
|----------------|---|
| June 4, 2020 | The Board approved the Final 2021 – 2026 CAWCD Rate Schedule including Provisional rates for 2022 and Advisory rates for 2023 through 2026 |
| April 15, 2021 | The CAGRD & Underground Storage Committee recommended that the Board approve the Preliminary Underground Water Storage O&M and Underground Water Storage Capital Charge Rate Schedule for 2022 through 2026 |
| May, 6, 2021 | The Board approved the Preliminary Underground Water Storage O&M and Underground Water Storage Capital Charge Rate Schedule for 2022 through 2026 |

ISSUE SUMMARY/DESCRIPTION:

The Underground Water Storage O&M and Underground Water Storage Capital Charge rates are included as part of the General Fund Water Rate Schedule. CAGRD and Underground Storage Committee has purview over these rates, reviews these rates and makes a recommendation on approval of these rates to the Board.

Underground Water Storage O&M

The Underground Water Storage rates are set based on a multi-year look ahead at costs and water volumes. Currently, the Phoenix AMA Underground Water Storage O&M rates slowly trend up over time from \$13/af in 2022 to \$15/af by 2026. The Tucson AMA Underground Water Storage O&M rate remains flat at \$15/af as storage volumes and expenses remain steady. These rates are consistent with the previous advisory rates.

Underground Water Storage Capital Charges

An Underground Water Storage capital charge is paid by all direct recharge customers except AWBA for M&I firming, the CAGRD, municipal providers within the CAP service area and co-owners of CAWCD Underground Water Storage facilities using no more than their share of capacity. The proposed Underground Water Storage Capital Charge is \$15 per acre-foot for the Phoenix AMA and \$9 per acre-foot for the Tucson AMA for the entire rate-setting period. There is no change in the proposed Underground Water Storage Capital Charge schedule from the Board approved rates in 2020.

The Underground Water Storage rates will remain a section of the CAP Water Rate Schedule, which is attached. The CAGRD & Underground Storage Committee is only recommending the Underground Water Storage rate portion of the attached Water Rate Schedule.

SUGGESTED MOTION:

I move that the Board of Directors adopt the Final Underground Water Storage O&M and Underground Water Storage Capital Charge Rate Schedule for 2022 through 2026.

ATTACHMENTS:

1. Final CAWCD 2022-2026 Water Rate Schedule

**CENTRAL ARIZONA PROJECT
FINAL 2022-2026 RATE SCHEDULE**

June 10, 2021

DELIVERY RATES FOR VARIOUS CLASSES OF WATER SERVICE

Units = \$/ acre-foot

(The Letter Designations in the Formulas Refer to the Rate Components Shown Below)

| DCP Tier | | T0 Firm 2021 | T1 Firm 2022 | T1 2023 | T1 Advisory 2024 | T1 2025 | T1 2026 |
|---|--------|--------------------|--------------------|------------|------------------------|------------|------------|
| | 2020 | | | | | | |
| Municipal and Industrial Subcontract (B+C) ^{6,7} | \$ 155 | \$ 160 | \$ 192 | \$ 200 | \$ 214 | \$ 222 | \$ 225 |
| Federal Contract (B+C) ^{6,7} | \$ 155 | \$ 160 | \$ 192 | \$ 200 | \$ 214 | \$ 222 | \$ 225 |
| Agricultural Settlement Pool (C) ¹ | \$ 56 | \$ 56 | \$ 56 | \$ 57 | \$ 61 | \$ 61 | \$ 63 |
| Excess (A+B+C) ^{2,6} | \$ 211 | \$ 213 | \$ 242 | \$ 256 | \$ 284 | \$ 290 | \$ 291 |
| Interstate (A+B+C+D) | TBD | TBD | TBD | TBD | TBD | TBD | TBD |

RATE COMPONENTS

Units = \$/acre-foot

| | 2020 | Firm 2021 | Firm 2022 | 2023 | Advisory 2024 | 2025 | 2026 |
|---|-------|--------------|--------------|---------|------------------|--------|--------|
| Capital Charges | | | | | | | |
| (A) Municipal and Industrial - Long Term Subcontract ³ | \$ 56 | \$ 53 | \$ 50 | \$ 56 | \$ 70 | \$ 68 | \$ 66 |
| Delivery Charges | | | | | | | |
| Fixed O&M ⁴ | 75 | 78 | 103 | 105 | 112 | 120 | 121 |
| "Big R" ⁴ | 24 | 26 | 33 | 38 | 41 | 41 | 41 |
| (B) Fixed OM&R ⁴ | \$ 99 | \$ 104 | \$ 136 | \$ 143 | \$ 153 | \$ 161 | \$ 162 |
| (C) Pumping Energy Rate ⁵ | \$ 56 | \$ 56 | \$ 56 | \$ 57 | \$ 61 | \$ 61 | \$ 63 |
| (D) Property Tax Equivalency | TBD | TBD | TBD | TBD | TBD | TBD | TBD |
| (E) Full Rate Stabilization ⁶ | \$ - | \$ - | \$ (13) | \$ (12) | \$ - | \$ - | \$ - |
| (F) 2020 Voluntary Rate Stabilization ⁷ | \$ - | \$ - | \$ - | \$ - | \$ (11) | \$ - | \$ - |

DIRECT UNDERGROUND WATER STORAGE

Units = \$/acre-foot

| | 2020 | Firm 2021 | Firm 2022 | 2023 | Advisory 2024 | 2025 | 2026 |
|---|-------|--------------|--------------|-------|------------------|-------|-------|
| Underground Water Storage O&M⁸ | | | | | | | |
| Phoenix AMA | \$ 13 | \$ 13 | \$ 13 | \$ 13 | \$ 14 | \$ 14 | \$ 15 |
| Tucson AMA | 15 | 15 | 15 | 15 | 15 | 15 | 15 |
| Underground Water Storage Capital Charge⁹ | | | | | | | |
| Phoenix AMA | \$ 15 | \$ 15 | \$ 15 | \$ 15 | \$ 15 | \$ 15 | \$ 15 |
| Tucson AMA | 9 | 9 | 9 | 9 | 9 | 9 | 9 |

**CENTRAL ARIZONA PROJECT
FINAL 2022-2026 RATE SCHEDULE**

June 10, 2021

NOTES:

- 1) Rate is the Pumping Energy Rate component.
- 2) Excess water is administered via Board Policy "Procedure For Distributing CAP Excess Water and Turn-Back Water for the Period of 2020 Through 2024".
- 3) For M&I use water, the Capital Charge is paid on full allocation regardless of amount delivered and is not included in delivery rates. The Capital Charge rate is impacted by the following:
 - 2021 - 1-cent of 2019/20 property taxes were approved to be applied to the federal repayment by the CAWCD Board in 2019. An additional 2- cents of property taxes are being applied to the federal repayment from the 2020/21 property taxes, resulting in a reduction of \$26/AF.
 - 2022 - 2 1/2 cents of 2020/21 property taxes are being applied to the federal repayment, resulting in a reduction of \$21/AF.
- 4) Fixed OM&R charge consists of Fixed O&M and "Big R" (Water delivery capital, large extraordinary maintenance projects and bond debt service). Debt service on CAP's Water Delivery O&M Revenue Bonds, Series 2016 is about \$3.6 million annually and is included in "Big R". This rate is collected on all ordered water whether delivered or not.
- 5) The pumping energy rate applies to all actual water volumes delivered as opposed to scheduled.
- 6) If Tier 1 or higher occurs, the Full Rate Stabilization takes effect, resulting in a reduction in the Fixed OM&R rate. Posted rates do not include this reduction. This is a customer funded program.
- 7) If Tier 1 or higher occurs, the 2020 Voluntary Rate Stabilization program takes effect for those entities participating, resulting in a reduction in the Energy rate. Posted rates do not include this reduction. This is a customer funded program.
- 8) Underground Water Storage O&M is paid by all direct recharge customers using CAP recharge sites.
- 9) Underground Water Storage Capital Charge is paid by all direct recharge customers except AWBA for M&I firming, the CAGR, municipal providers within the CAP service area and co-owners of CAWCD recharge facilities using no more than their share of capacity.

Key Assumptions

- Non-Indian Ag reallocation occurs in 2021 for 2022 deliveries
- Wheeling starts in 2023 at 3,000 acre-foot/year and increases to 4,000 acre-foot/year in 2024 and remains at that level
- Rates are in accordance with Arizona Implementation Plan for Drought Contingency Plan

FIXED OM&R RATE AT DCP TIERS (For Planning Purposes Only)

Units = \$/ acre-foot

| | Firm | Advisory | | | |
|----------------|---------------|-----------------|-------------|-------------|-------------|
| | 2022 | 2023 | 2024 | 2025 | 2026 |
| Normal | \$ 102 | \$ 107 | \$ 113 | \$ 119 | \$ 120 |
| Tier 0 | \$ 109 | \$ 114 | \$ 121 | \$ 127 | \$ 128 |
| Tier 1 | \$ 136 | \$ 143 | \$ 153 | \$ 161 | \$ 162 |
| Tier 2a | \$ 146 | \$ 155 | \$ 165 | \$ 173 | \$ 174 |
| Tier 2b | \$ 152 | \$ 162 | \$ 172 | \$ 181 | \$ 182 |
| Tier 3 | \$ 164 | \$ 176 | \$ 186 | \$ 196 | \$ 197 |

Rates are net of rate stabilization

FINANCE, AUDIT AND POWER COMMITTEE REPORT



May 20, 2021 Meeting

Meeting called to order at 9:00 a.m. Committee Members present were: Chair Mark Taylor, Pima County; Karen Cesare, Pima County; Pat Jacobs, Pima County; Heather Macre, Maricopa County; April Pinger-Tornquist, Maricopa County.

Report on Salome Solare Phase 2 Power Purchasing Agreement

Brian Young, Power Programs Manager, gave an update on the agreement. He gave a basic overview of the capacity, layout, and output of the project. The contract is for 2023-2043 and has two tiers of pricing that will average less than \$33/MWh. When operating commercially, the project will account for 8% of CAP's pumping energy requirement (based on Tier 1 shortage).

Report on Power Programs

Brian Young, Power Programs Manager, gave an update on the 2021 and 2022 energy costs, accounting for the impacts of outages in California and Texas. In 2021 and 2022, he estimates we will be at, or slightly below, the published energy rate of \$56/AF. He also provided an outlook of 2023 & 2024 energy costs and informed the Committee that CAP has acquired 35% of its projected 2023 need and 30% of its energy needed for 2024. Forward energy prices for 2023 are over 50% higher, on average, than before the 2020 summer pricing spike. While CAP can mitigate some of this increase with additional favorable forward purchases and shaping, the energy rate is estimated to increase \$9/AF in 2023 from the current advisory rate (up to \$66/AF from \$57/AF).

Report on Internal Audit Activities

Ramon Ramirez, Internal Auditor gave updates on the 2021-22 Internal Audit Plan and the status of the Land Sales Audit.

Discussion of Issues Raised During Rate Setting Cycle

Chairman Taylor opened discussion for how the Committee should proceed, given the discussion on the topic of alternative rates, price signaling, taxes, and capital charges that occurred at the May Board meeting. He directed staff to return in future meetings to explore these topics and suggested an outside Economist would be helpful. He stated he wanted to explore the economic benefits of CAP in relation to taxpayers and ratepayers, if possible; and evaluate the relative risks of upcoming unfunded liabilities. He asked other Committee members for an open discussion to determine their thoughts on the process moving forward.

Board Member Jacobs asked to include a history of CAP's commitments, which will illuminate why rates are structured the way they are today. He would like explanations for the footnotes in the rate sheet. He would also like a Property Tax 101 presentation.

Financial Planning & Analysis

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FINANCE, AUDIT AND POWER COMMITTEE REPORT



Board Member Cesare would like a roadmap (high level) of the rate-setting/tax process. She suggested looking toward what the final outcome should be as the data comes in.

Board Member Pinger-Tornquist agreed with Director Cesare that the data is important, and she would like to see how things unfold.

Board Member Macre said this was a good list, noting it needs to be data driven. She wants to ensure the Committee works within the legal framework set by the Legislature. She asked for non-CAP presenters to come in to understand and inspire different ideas.

Warren Tenney, AMWUA, submitted a blue card asking the Committee to keep in mind the financial stability of CAP as it heads into uncertain times on the Colorado River.

Contact for more information:

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CAGRD & UNDERGROUND STORAGE COMMITTEE REPORT



May 20, 2021 Meeting

Meeting was held remotely due to social distancing guidelines in place during COVID-19 pandemic. Board Members present were Chair Alexandra Arboleda, Jim Holway, Pat Jacobs, Mark Lewis, Jennifer Martin and Stephen Miller.

Discussion and Stakeholder Perspectives on the GWAICC Post-2025 AMA Committee Issue: Groundwater in the Assured Water Supply Program

Laura Grignano, CAGRD Manager provided an overview of the Assured Water Supply Program (AWS), emphasizing the regulatory underpinnings providing consumer protection. Ms. Grignano also described the issue brief released by the GWAICC's Post-2025 AMA Committee on Groundwater in the Assured Water Supply program, noting this issue brief failed to reach consensus with the Post-2025 AMA Committee.

Providing the perspective of environmental NGOs, Haley Paul, Audubon Society and Water for Arizona Coalition, spoke in support of the questions raised in the issue brief stating, "These are the right issues to be examining." Ms. Paul continued, "We recognize there are improvements that must be made to our water policies to adapt to climate change and maintain essential consumer protections." In response to comments by Board Member Holway regarding CAGRD growing beyond its initial role and niche, Ms. Paul responded regarding the focus next phase of the committee is to think about solutions and new ways of thinking.

Warren Tenney, AMWUA and also co-chair of the Post-2025 AMA Committee, and Cynthia Campbell, City of Phoenix, provided comments on behalf of water providers with little or no reliance on the CAGRD. Mr. Tenney stated "We all recognize the Assured Water Supply Program has been beneficial for Central and Southern Arizona... [and] has given us a foundation for economic success." Observing that failure in the AWS would have a negative impact on Arizona, Mr. Tenney observed, "AMWUA cities are adamant about protecting the Assured Water Supply Program and not seeing it weakened" and advocated for its improvement. Ms. Campbell noted that while the AWS program was designed to keep water providers accountable, "we're still pumping more than Mother Nature will bear and there are too many exceptions and loopholes in the rules." Identifying warning signs related to the AWS, Ms. Campbell stated, "it has taken decades for these problems to develop and it's going to take decades of incremental changes to solve those problems" to encourage the CAGRD and Underground Storage Committee's involvement in the Post-2025 AMA process.

From the perspective of water providers with significant reliance on the CAGRD, Doug Dunham of EPCOR Water, identified the AWS and CAGRD as the "crown jewels of the entire groundwater code and it's a very key important element of the economy of the state of Arizona." Describing the diversity of the water

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[1]



CAGRD & UNDERGROUND STORAGE COMMITTEE REPORT



providers owned by EPCOR and the resulting diversity of water supplies used by those providers, Mr. Dunham described the CAGRD as enabling EPCOR's Agua Fria system to transition from only groundwater to utilizing surface water and noting this as an example of "how an area can grow once you reach that critical mass of population that additional infrastructure can be brought in."

Representatives from the development community were Cheryl Lombard, Valley Partnership and Co-chair of the Post-2025 AMA Committee, and Spencer Kamps, Home Builders Association of Central Arizona. Ms. Lombard began by observing the basic premise of the issue brief is skewed to a position where the "use of groundwater – even replenished groundwater – in the Assured Water Supply is inherently contradictory to the program and should never be permitted." Ms. Lombard reiterated the need for more data prior to developing solutions and called for "an in-depth analysis, similar to what is done by the CAGRD Plan of Operations, of whether existing supplies in Arizona can be acquired." Ms. Lombard's remarks concluded with a discussion of a state-wide authority or entity tasked with acquiring renewable water supplies. Mr. Kamps, in his comments noted, "Changes to the Assured Water Supply program can send a signal that Arizona is closed for business." Citing multiple concerns with the issue brief, Mr. Kamps stated the Homebuilders Association, "would much rather have an honest, straightforward discussion on whether Arizona is going to continue to grow on groundwater or not." In response to Board Member Lewis' question on a state-level entity acquiring renewable supplies, Ms. Lombard and Carol Ward, Deputy Assistant Director for Planning and Permitting at ADWR, responded the program was still under development with no additional information at this time.

Dr. Sharon Megdal, University of Arizona Water Resources Research Center and former CAGRD and Underground Storage Committee chair, recalled existing legislation allows for multiple replenishment entities. On next steps for the Post-2025 AMA Committee following previous stakeholders' comments, Dr. Megdal noted "it's very hard to develop solutions if you don't have an agreement on what the problem is." Dr. Megdal continued by saying "we could end up, through this process, where we ended up after the 2001 Governor's Water Management Commission process" and elaborating on the history of the 2001 water management efforts which led to few changes. Laura Grignano, CAGRD Manager, stated some of the changes ultimately adopted following the Commission process led to CAGRD's Replenishment Reserve and increased ADWR authority on the review of the CAGRD Plan of Operations.

Following the stakeholders' presentations, Board Members Holway, Jacobs and Lewis provided comments regarding the Water Management Commission, future water management in Arizona, and the development of guiding principles to steer efforts at the Post-2025 AMA Committee.

A full video of the CAGRD and Underground Storage Committee Meeting – including the full commentary of the invited speakers is available at <https://cap-az.granicus.com/player/clip/524>.

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CAGRD & UNDERGROUND STORAGE COMMITTEE REPORT



Report on CAGRD Conservation Program

David Dunaway, CAGRD Policy Analyst, provided an update on the CAGRD Conservation program. Mr. Dunaway provided a brief history of the program, along with recent program accomplishments and possible options in funding continued development of the program. Chair Arboleda and Board Member Holway provided comments and direction on the program; with Mr. Dunaway responding to a question from Chair Arboleda regarding overlap conservation efforts proscribed in the existing Management Plans.

Report on 2021 Member Land and Member Service Area Enrollment and Activation through Q1

David Dunaway, CAGRD Policy Analyst presented enrollment and activation numbers for Member Lands and Member Service Areas in the first quarter of 2021. Mr. Dunaway provided information comparing recent increases in activity versus activity during the housing boom of the 2000s as well as updated information on constructed lots in Member Lands in each AMA.

Future Agenda Items

The next meeting of the CAGRD and Underground Storage Committee will be on June 24 and include the final series of stakeholder presentations on CAGRD Replenishment and Water Supplies.

Contact for more information:

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CAGRD

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ACTION BRIEF

BOARD OF DIRECTORS



Agenda Number 9

CONTACT: Greg Adams Ken Seasholes
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gadams@cap-az.com kseasholes@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: Discussion and Consideration of Action to Enter into Subcontracts for CAP NIA Priority Water with Carefree Water Company, Town of Cave Creek, EPCOR-Sun City West, EPCOR-San Tan, Town of Queen Creek, Town of Marana, Apache Junction Water Utilities Community Facilities District, City of El Mirage, Town of Gilbert, City of Buckeye, CAWCD (in its capacity as the Central Arizona Groundwater Replenishment District), Viewpoint RV and Golf Resort, New Harquahala Generating Company, Rosemont Copper Company, Salt River Project, Resolution Copper Mining, Freeport-McMoRan-Sierrita, Inc. (*Water Supply^*) - Adams

RECOMMENDATION: Staff recommends that the Board authorize the President, or his designee, to execute Subcontracts among the United States, CAWCD and the following entities in substantially the same form as those attached to this brief:

- Carefree Water Company
- Town of Cave Creek
- EPCOR-Sun City West
- EPCOR-San Tan
- Town of Queen Creek
- Town of Marana
- Apache Junction Water Utilities Community Facilities District
- City of El Mirage
- Town of Gilbert
- City of Buckeye
- Central Arizona Water Conservation District, acting in its capacity as the Central Arizona Groundwater Replenishment District
- Viewpoint RV and Golf Resort
- New Harquahala Generating Company
- Rosemont Copper Company
- Salt River Project Agricultural Improvement and Power District
- Resolution Copper Mining
- Freeport-McMoRan - Sierrita, Inc.

FISCAL IMPLICATIONS: No

Impact on Budget:

None.

Additional spending authority requested: None.

Impact on Reserves:

None - Current reserve forecasts assume that the NIA Reallocation will proceed with deliveries of reallocated NIA water starting in 2022.

Impact on Rates:

None – Current rate forecasts assume that the NIA Reallocation will proceed with deliveries of reallocated NIA water starting in 2022.

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

2022 CAWCD Board Strategic Plan

Water Supply: *Providing a reliable CAP water supply for the short- and long-term*

PREVIOUS BOARD ACTION/ACTIVITY:

| | |
|-----------------|----------------------------------|
| August 6, 2020 | Report on NIA Reallocation |
| October 1, 2020 | Report on NIA Reallocation |
| April 1, 2021 | Report on NIA Reallocation |
| May 6, 2021 | Discussion on NIA Subcontracting |

ISSUE SUMMARY/DESCRIPTION:

As previously outlined in the May 6, 2021 Informational Board Brief regarding NIA Subcontracting, pursuant to the Arizona Water Settlements Act of 2004, on January 15, 2021, the Department of Interior issued notice in the Federal Register of its final decision to reallocate 46,629 AF of CAP NIA Priority Water to a total of 18 entities for municipal and industrial water uses. See 86 Fed. Reg. 4119 (Jan. 15, 2021).

During May 2021, staff from Reclamation and CAWCD met with representatives of the NIA reallocation recipients to discuss the draft subcontract template presented to the Board at the May 6, 2021 Board Meeting. As a result of those meetings, CAWCD and Reclamation agreed to minor edits to the subcontract template to correct typographical errors and other minor clarifications. No substantive edits to the subcontract template were made.

As the CAGRD is not a separate legal entity, CAWCD and Reclamation made a few specific edits to the subcontract for the CAGRD NIA allocation:

1. Amended the Preamble to specify that for purposes of the Agreement, CAWCD, acting in its capacity as a groundwater replenishment district pursuant to A.R.S. §§ 48-3771, *et. seq*, is a Subcontractor, in addition to CAWCD's role as Contractor under the 1988 Master Repayment Contract.
2. Added an additional recital describing the creation of and statutory purposes of the CAGRD.
3. Included a new provision 4.1(b) to expressly provide that the Subcontract does not modify the 1988 Master Repayment Contract or the Repayment Litigation Stipulation for Judgment.

As a subcontractor, CAWCD, acting in its CAGRD capacity is required to comply with all subcontract provisions, including submitting water orders, paying all rates, fees and charges, and sharing in reduced supplies in the same manner as all other NIA subcontractors.

The final draft subcontracts are attached to this brief. 1, 2

CAWCD staff and the United States anticipate that the final subcontracts will be fully executed in late August or early September 2021, and water deliveries will begin under these subcontracts in 2022. The

subcontracting entities, proposed contract numbers and entitlement volumes are included in the table below.

| Contract No. | Subcontractor | Volume (AFY) |
|---------------------|---|---------------------|
| 21-XX-30-W0693 | Carefree Water Company | 112 |
| 21-XX-30-W0694 | Town of Cave Creek | 386 |
| 21-XX-30-W0695 | EPCOR – Sun City West | 1,000 |
| 21-XX-30-W0696 | Town of Queen Creek | 4,162 |
| 21-XX-30-W0697 | Town of Marana | 515 |
| 21-XX-30-W0698 | Apache Junction Water Utilities Community Facilities District | 817 |
| 21-XX-30-W0699 | City of El Mirage | 1,318 |
| 21-XX-30-W0700 | Town of Gilbert | 1,832 |
| 21-XX-30-W0701 | City of Buckeye | 2,786 |
| 21-XX-30-W0702 | EPCOR – San Tan | 3,217 |
| 21-XX-30-W0703 | CAWCD, acting in its capacity as the Central Arizona Groundwater Replenishment District | 18,185 |
| 21-XX-30-W0704 | Viewpoint RV and Golf Resort | 400 |
| 21-XX-30-W0705 | New Harquahala Generating Company | 400 |
| 21-XX-30-W0706 | Rosemont Copper Company | 1,124 |
| 21-XX-30-W0707 | Salt River Project Agricultural Improvement and Power District | 2,160 |
| 21-XX-30-W0708 | Resolution Copper Mining | 2,238 |
| 21-XX-30-W0709 | Freeport-McMoRan – Sierrita, Inc. | 5,678 |

1 Metropolitan Domestic Water Improvement District informed CAWCD that it does not intend to enter into a subcontract for NIA Priority Water.

2 The United States Federal Register Notice approved a reallocation of 3,217 acre-feet of CAP NIA Priority Water for Johnson Utilities. EPCOR-San Tan has acquired the assets of Johnson Utilities. Johnson Utilities and EPCOR-San Tan are in the process of having the Johnson Utilities entitlement transferred to EPCOR-San Tan to serve the same uses previously intended to be served by Johnson Utilities. The United States supports bringing the subcontract in EPCOR-San Tan's name at this time to ensure timely execution of the Subcontract by all parties in time for October 2021 water orders for 2022 water deliveries .

SUGGESTED MOTION:

I move that the Board authorize the President, or his designee, to execute Subcontracts among the United States, CAWCD and the following entities in substantially the same form as those attached to this brief:

- Carefree Water Company
- Town of Cave Creek
- EPCOR-Sun City West
- EPCOR-San Tan
- Town of Queen Creek
- Town of Marana
- Apache Junction Water Utilities Community Facilities District
- City of El Mirage
- Town of Gilbert
- City of Buckeye
- Central Arizona Water Conservation District, acting in its capacity as the Central Arizona Groundwater Replenishment District
- Viewpoint RV and Golf Resort
- New Harquahala Generating Company

- Rosemont Copper Company
- Salt River Project Agricultural Improvement and Power District
- Resolution Copper Mining
- Freeport-McMoRan - Sierrita, Inc.

ATTACHMENTS:

1. 05 27 2021 Final Draft NIA Reallocation Subcontract - Carefree Water Company
2. 05 27 2021 Final Draft NIA Reallocation Subcontract - Cave Creek
3. 05 27 2021 Final Draft NIA Reallocation Subcontract - EPCOR - Sun City West
4. 05 27 2021 Final Draft NIA Reallocation Subcontract - EPCOR - San Tan
5. 05 27 2021 Final Draft NIA Reallocation Subcontract - Queen Creek
6. 05 27 2021 Final Draft NIA Reallocation Subcontract - Marana
7. 05 27 2021 Final Draft NIA Reallocation Subcontract - Apache Junction WUCFD
8. 05 27 2021 Final Draft NIA Reallocation Subcontract - El Mirage
9. 05 27 2021 Final Draft NIA Reallocation Subcontract - Gilbert
10. 05 27 2021 Final Draft NIA Reallocation Subcontract - Buckeye
11. 05 27 2021 Final Draft NIA Reallocation Subcontract - CAGR D
12. 05 27 2021 Final Draft NIA Reallocation Subcontract - Viewpoint RV and Golf Resort
13. 05 27 2021 Final Draft NIA Reallocation Subcontract - New Harquahala Generating Company
14. 05 27 2021 Final Draft NIA Reallocation Subcontract - Rosemont Copper Company
15. 05 27 2021 Final Draft NIA Reallocation Subcontract - SRP
16. 05 27 2021 Final Draft NIA Reallocation Subcontract - Resolution Copper Mining
17. 05 27 2021 Final Draft NIA Reallocation Subcontract - Freeport-McMoRan Sierrita

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE CAREFREE WATER COMPANY
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____,
in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory
thereof or supplementary thereto, including but not limited to the Boulder Canyon Project
Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of
August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12,
1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September
30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat.
3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws,"
among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States"
or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL
ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the
"Contractor," a water conservation district organized under the laws of Arizona, with its
principal place of business in Phoenix, Arizona, and the CAREFREE WATER COMPANY
hereinafter referred to as the "Subcontractor," with its principal place of business in
Carefree, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.
22

23 (a) Where the Contracting Officer determines the Subcontractor is
24 physically able to receive Colorado River mainstream water through the Project Works in
25 exchange for or in replacement of existing supplies of water from surface sources other
26 than the Colorado River, the Contracting Officer may require that the Subcontractor accept

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.
6

7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.
13

14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 112 acre-feet of CAP NIA Priority Water for M&I uses including but not limited
17 to underground storage.
18

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

23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.
26

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 112 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
26

1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the
4 General Manager, Carefree Water Company, P.O. Box 702, Carefree, Arizona 85377, on
5 behalf of the United States or Contractor. The designation of the addressee or the address
6 may be changed by notice given in the same manner as provided in this Article for other
7 notices.
8

9 6.4 Change in Operating Agency. If at any time during the term of this
10 Subcontract the Contractor and the Operating Agency are not the same entity, the
11 Contractor agrees to coordinate and cooperate with the Operating Agency on any
12 obligations of the Contractor under this Subcontract that pertain to the operation of the
13 Central Arizona Project and delivery of Project Water hereunder.
14

15 6.5 Rules, Regulations, and Determinations.

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

24 (b) Where the terms of this subcontract provide for action to be
25 based upon the opinion or determination of any party to this subcontract, whether or not
26 stated to be conclusive, said terms shall not be construed as permitting such action to be

1 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
2 event that the Contractor or Subcontractor questions any factual determination made by
3 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
4 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
5 parties.

6
7 6.6 Officials Not to Benefit.

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

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

15
16 6.7 Assignment Limited--Successors and Assigns Obligated. The
17 provisions of this subcontract shall apply to and bind the successors and assigns of the
18 parties hereto, but no assignment or transfer of this subcontract or any part or interest
19 therein shall be valid until approved by the Contracting Officer.

20 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
21 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
22 court of the United States or the State of Arizona which would otherwise be available to
23 such parties even though provisions herein may declare that determinations or decisions
24 of the Secretary or other persons are conclusive or (b) as depriving any party of any
25 defense thereto which would otherwise be available.
26

1 6.9 Books, Records, and Reports. The Subcontractor shall establish and
2 maintain accounts and other books and records pertaining to its financial transactions,
3 land use and crop census, water supply, water use, changes of Project works, and to other
4 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
5 Contracting Officer in such form and on such date or dates as he may require. Subject to
6 applicable Federal laws and regulations, each party shall have the right during office hours
7 to examine and make copies of each other's books and records relating to matters covered
8 by this subcontract.
9

10 6.10 Equal Employment Opportunity.

11 During the performance of this subcontract, the Subcontractor agrees as
12 follows:
13

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

1 (b) The Subcontractor will, in all solicitations or advancements for
2 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
3 will receive consideration for employment without regard to race, color, religion, sex,
4 sexual orientation, gender identity, or national origin.

5 (c) The Subcontractor will not discharge or in any other manner
6 discriminate against any employee or applicant for employment because such employee
7 or applicant has inquired about, discussed, or disclosed the compensation of the
8 employee or applicant or another employee or applicant. This provision shall not apply to
9 instances in which an employee who has access to the compensation information of other
10 employees or applicants as a part of such employee's essential job functions discloses
11 the compensation of such other employees or applicants to individuals who do not
12 otherwise have access to such information, unless such disclosure is in response to a
13 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
14 action, including an investigation conducted by the employer, or is consistent with the
15 contractor's legal duty to furnish information.
16

17 (d) The Subcontractor will send to each labor union or representative
18 of workers with which he has a collective bargaining agreement or other contract or
19 understanding, a notice, to be provided by the agency Contracting Officer, advising the
20 labor union or workers' representative of the Subcontractor's commitments under section
21 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
22 notice in conspicuous places available to employees and applicants for employment.
23
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1 (e) The Subcontractor will comply with all provisions of Executive
2 Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of
3 the Secretary of Labor.

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title III of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0693 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

CAREFREE WATER COMPANY

Attest: _____

By: _____

Title: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE TOWN OF CAVE CREEK
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the TOWN OF CAVE CREEK hereinafter referred to as the "Subcontractor," with its principal place of business in Cave Creek, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.

22 (a) Where the Contracting Officer determines the Subcontractor is
23 physically able to receive Colorado River mainstream water through the Project Works in
24 exchange for or in replacement of existing supplies of water from surface sources other
25 than the Colorado River, the Contracting Officer may require that the Subcontractor accept
26

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.

6
7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.

13
14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 386 acre-feet of CAP NIA Priority Water for M&I uses including but not limited
17 to underground storage.

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

22
23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 386 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
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1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the Town
4 of Cave Creek, Carrie Dyrek, 37622 N. Cave Creek Road, with a copy to William J. Sims,
5 III, Sims Mackin, Ltd., 3101 North Central Avenue, Suite 870, Phoenix, Arizona 85012, on
6 behalf of the United States or Contractor. The designation of the addressee or the address
7 may be changed by notice given in the same manner as provided in this Article for other
8 notices.
9

10 6.4 Change in Operating Agency. If at any time during the term of this
11 Subcontract the Contractor and the Operating Agency are not the same entity, the
12 Contractor agrees to coordinate and cooperate with the Operating Agency on any
13 obligations of the Contractor under this Subcontract that pertain to the operation of the
14 Central Arizona Project and delivery of Project Water hereunder.
15

16 6.5 Rules, Regulations, and Determinations.

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

25 (b) Where the terms of this subcontract provide for action to be
26 based upon the opinion or determination of any party to this subcontract, whether or not

1 stated to be conclusive, said terms shall not be construed as permitting such action to be
2 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
3 event that the Contractor or Subcontractor questions any factual determination made by
4 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
5 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
6 parties.
7

8 6.6 Officials Not to Benefit.

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

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

17 6.7 Assignment Limited--Successors and Assigns Obligated. The
18 provisions of this subcontract shall apply to and bind the successors and assigns of the
19 parties hereto, but no assignment or transfer of this subcontract or any part or interest
20 therein shall be valid until approved by the Contracting Officer.
21

22 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
23 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
24 court of the United States or the State of Arizona which would otherwise be available to
25 such parties even though provisions herein may declare that determinations or decisions
26

1 of the Secretary or other persons are conclusive or (b) as depriving any party of any
2 defense thereto which would otherwise be available.

3 6.9 Books, Records, and Reports. The Subcontractor shall establish and
4 maintain accounts and other books and records pertaining to its financial transactions,
5 land use and crop census, water supply, water use, changes of Project works, and to other
6 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
7 Contracting Officer in such form and on such date or dates as he may require. Subject to
8 applicable Federal laws and regulations, each party shall have the right during office hours
9 to examine and make copies of each other's books and records relating to matters covered
10 by this subcontract.
11

12 6.10 Equal Employment Opportunity.

13 During the performance of this subcontract, the Subcontractor agrees as
14 follows:
15

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

1 available to employees and applicants for employment, notices to be provided by the
2 Contracting Officer setting forth the provisions of this nondiscrimination clause.

3 (b) The Subcontractor will, in all solicitations or advancements for
4 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
5 will receive consideration for employment without regard to race, color, religion, sex,
6 sexual orientation, gender identity, or national origin.

7
8 (c) The Subcontractor will not discharge or in any other manner
9 discriminate against any employee or applicant for employment because such employee
10 or applicant has inquired about, discussed, or disclosed the compensation of the
11 employee or applicant or another employee or applicant. This provision shall not apply to
12 instances in which an employee who has access to the compensation information of other
13 employees or applicants as a part of such employee's essential job functions discloses
14 the compensation of such other employees or applicants to individuals who do not
15 otherwise have access to such information, unless such disclosure is in response to a
16 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
17 action, including an investigation conducted by the employer, or is consistent with the
18 contractor's legal duty to furnish information.

19
20 (d) The Subcontractor will send to each labor union or representative
21 of workers with which he has a collective bargaining agreement or other contract or
22 understanding, a notice, to be provided by the agency Contracting Officer, advising the
23 labor union or workers' representative of the Subcontractor's commitments under section
24 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
25 notice in conspicuous places available to employees and applicants for employment.
26

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

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0694 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

THE TOWN OF CAVE CREEK

Attest: _____

By: _____
Ernie Buch

Title: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE EPCOR – SUN CITY WEST
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____,
in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory
thereof or supplementary thereto, including but not limited to the Boulder Canyon Project
Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of
August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12,
1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September
30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat.
3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws,"
among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States"
or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL
ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the
"Contractor," a water conservation district organized under the laws of Arizona, with its
principal place of business in Phoenix, Arizona, and EPCOR UTILITIES, INC. hereinafter
referred to as the "Subcontractor," with its principal place of business in Phoenix, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.

22 (a) Where the Contracting Officer determines the Subcontractor is
23 physically able to receive Colorado River mainstream water through the Project Works in
24 exchange for or in replacement of existing supplies of water from surface sources other
25 than the Colorado River, the Contracting Officer may require that the Subcontractor accept
26

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.
6

7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.
13

14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 1,000 acre-feet of CAP NIA Priority Water for M&I uses including but not
17 limited to underground storage.
18

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

23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.
26

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 1,000 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
26

1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to Doug
4 Dunham, Water Resources Manager, Epcor, 2355 West Pinnacle Peak Road, Suite
5 300, Phoenix, Arizona 85027, on behalf of the United States or Contractor. The
6 designation of the addressee or the address may be changed by notice given in the same
7 manner as provided in this Article for other notices.
8

9 6.4 Change in Operating Agency. If at any time during the term of this
10 Subcontract the Contractor and the Operating Agency are not the same entity, the
11 Contractor agrees to coordinate and cooperate with the Operating Agency on any
12 obligations of the Contractor under this Subcontract that pertain to the operation of the
13 Central Arizona Project and delivery of Project Water hereunder.
14

15 6.5 Rules, Regulations, and Determinations.

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

24 (b) Where the terms of this subcontract provide for action to be
25 based upon the opinion or determination of any party to this subcontract, whether or not
26 stated to be conclusive, said terms shall not be construed as permitting such action to be

1 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
2 event that the Contractor or Subcontractor questions any factual determination made by
3 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
4 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
5 parties.

6
7 6.6 Officials Not to Benefit.

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

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

15
16 6.7 Assignment Limited--Successors and Assigns Obligated. The
17 provisions of this subcontract shall apply to and bind the successors and assigns of the
18 parties hereto, but no assignment or transfer of this subcontract or any part or interest
19 therein shall be valid until approved by the Contracting Officer.

20 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
21 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
22 court of the United States or the State of Arizona which would otherwise be available to
23 such parties even though provisions herein may declare that determinations or decisions
24 of the Secretary or other persons are conclusive or (b) as depriving any party of any
25 defense thereto which would otherwise be available.
26

1 6.9 Books, Records, and Reports. The Subcontractor shall establish and
2 maintain accounts and other books and records pertaining to its financial transactions,
3 land use and crop census, water supply, water use, changes of Project works, and to other
4 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
5 Contracting Officer in such form and on such date or dates as he may require. Subject to
6 applicable Federal laws and regulations, each party shall have the right during office hours
7 to examine and make copies of each other's books and records relating to matters covered
8 by this subcontract.
9

10 6.10 Equal Employment Opportunity.

11 During the performance of this subcontract, the Subcontractor agrees as
12 follows:
13

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

1 (b) The Subcontractor will, in all solicitations or advancements for
2 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
3 will receive consideration for employment without regard to race, color, religion, sex,
4 sexual orientation, gender identity, or national origin.

5 (c) The Subcontractor will not discharge or in any other manner
6 discriminate against any employee or applicant for employment because such employee
7 or applicant has inquired about, discussed, or disclosed the compensation of the
8 employee or applicant or another employee or applicant. This provision shall not apply to
9 instances in which an employee who has access to the compensation information of other
10 employees or applicants as a part of such employee's essential job functions discloses
11 the compensation of such other employees or applicants to individuals who do not
12 otherwise have access to such information, unless such disclosure is in response to a
13 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
14 action, including an investigation conducted by the employer, or is consistent with the
15 contractor's legal duty to furnish information.
16

17 (d) The Subcontractor will send to each labor union or representative
18 of workers with which he has a collective bargaining agreement or other contract or
19 understanding, a notice, to be provided by the agency Contracting Officer, advising the
20 labor union or workers' representative of the Subcontractor's commitments under section
21 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
22 notice in conspicuous places available to employees and applicants for employment.
23
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1 (e) The Subcontractor will comply with all provisions of Executive
2 Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of
3 the Secretary of Labor.

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title III of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0695 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

EPCOR – SUN CITY WEST

Attest: _____

Title: _____

By: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE EPCOR – SAN TAN
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____,
in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory
thereof or supplementary thereto, including but not limited to the Boulder Canyon Project
Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of
August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12,
1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September
30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat.
3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws,"
among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States"
or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL
ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the
"Contractor," a water conservation district organized under the laws of Arizona, with its
principal place of business in Phoenix, Arizona, and the EPCOR – SAN TAN hereinafter
referred to as the "Subcontractor," with its principal place of business in Phoenix, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.

22 (a) Where the Contracting Officer determines the Subcontractor is
23 physically able to receive Colorado River mainstream water through the Project Works in
24 exchange for or in replacement of existing supplies of water from surface sources other
25 than the Colorado River, the Contracting Officer may require that the Subcontractor accept
26

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.

6
7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.

13
14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 3,217 acre-feet of CAP NIA Priority Water for M&I uses including but not
17 limited to underground storage.

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

22
23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 3,217 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
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1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to Doug
4 Dunham, Water Resources Manager, Epcor, 2355 West Pinnacle Peak Road, Suite 300,
5 Phoenix, Arizona 85027, on behalf of the United States or Contractor. The designation of
6 the addressee or the address may be changed by notice given in the same manner as
7 provided in this Article for other notices.
8

9 6.4 Change in Operating Agency. If at any time during the term of this
10 Subcontract the Contractor and the Operating Agency are not the same entity, the
11 Contractor agrees to coordinate and cooperate with the Operating Agency on any
12 obligations of the Contractor under this Subcontract that pertain to the operation of the
13 Central Arizona Project and delivery of Project Water hereunder.
14

15 6.5 Rules, Regulations, and Determinations.

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

24 (b) Where the terms of this subcontract provide for action to be
25 based upon the opinion or determination of any party to this subcontract, whether or not
26 stated to be conclusive, said terms shall not be construed as permitting such action to be

1 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
2 event that the Contractor or Subcontractor questions any factual determination made by
3 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
4 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
5 parties.

6
7 6.6 Officials Not to Benefit.

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

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

15
16 6.7 Assignment Limited--Successors and Assigns Obligated. The
17 provisions of this subcontract shall apply to and bind the successors and assigns of the
18 parties hereto, but no assignment or transfer of this subcontract or any part or interest
19 therein shall be valid until approved by the Contracting Officer.

20 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
21 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
22 court of the United States or the State of Arizona which would otherwise be available to
23 such parties even though provisions herein may declare that determinations or decisions
24 of the Secretary or other persons are conclusive or (b) as depriving any party of any
25 defense thereto which would otherwise be available.
26

1 6.9 Books, Records, and Reports. The Subcontractor shall establish and
2 maintain accounts and other books and records pertaining to its financial transactions,
3 land use and crop census, water supply, water use, changes of Project works, and to other
4 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
5 Contracting Officer in such form and on such date or dates as he may require. Subject to
6 applicable Federal laws and regulations, each party shall have the right during office hours
7 to examine and make copies of each other's books and records relating to matters covered
8 by this subcontract.
9

10 6.10 Equal Employment Opportunity.

11 During the performance of this subcontract, the Subcontractor agrees as
12 follows:
13

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

1 (b) The Subcontractor will, in all solicitations or advancements for
2 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
3 will receive consideration for employment without regard to race, color, religion, sex,
4 sexual orientation, gender identity, or national origin.

5 (c) The Subcontractor will not discharge or in any other manner
6 discriminate against any employee or applicant for employment because such employee
7 or applicant has inquired about, discussed, or disclosed the compensation of the
8 employee or applicant or another employee or applicant. This provision shall not apply to
9 instances in which an employee who has access to the compensation information of other
10 employees or applicants as a part of such employee's essential job functions discloses
11 the compensation of such other employees or applicants to individuals who do not
12 otherwise have access to such information, unless such disclosure is in response to a
13 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
14 action, including an investigation conducted by the employer, or is consistent with the
15 contractor's legal duty to furnish information.
16

17 (d) The Subcontractor will send to each labor union or representative
18 of workers with which he has a collective bargaining agreement or other contract or
19 understanding, a notice, to be provided by the agency Contracting Officer, advising the
20 labor union or workers' representative of the Subcontractor's commitments under section
21 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
22 notice in conspicuous places available to employees and applicants for employment.
23
24
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1 (e) The Subcontractor will comply with all provisions of Executive
2 Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of
3 the Secretary of Labor.

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title III of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W702 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

EPCOR – SAN TAN

Attest: _____

Title: _____

By: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE TOWN OF QUEEN CREEK, ARIZONA
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the TOWN OF QUEEN CREEK, ARIZONA, an Arizona municipal corporation, hereinafter referred to as the "Subcontractor," with its principal place of business in Queen Creek, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.
22

23 (a) Where the Contracting Officer determines the Subcontractor is
24 physically able to receive Colorado River mainstream water through the Project Works in
25 exchange for or in replacement of existing supplies of water from surface sources other
26 than the Colorado River, the Contracting Officer may require that the Subcontractor accept

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.
6

7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.
13

14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 4,162 acre-feet of CAP NIA Priority Water for M&I uses including but not
17 limited to underground storage.
18

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

23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.
26

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 4,162 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
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1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to Scott A.
4 Holcomb, Town of Queen Creek Attorney, Dickinson Wright, PLLC, 1850 North Central
5 Avenue, Suite 1400, Phoenix, Arizona 85004, on behalf of the United States or Contractor.
6 The designation of the addressee or the address may be changed by notice given in the
7 same manner as provided in this Article for other notices.
8

9 6.4 Change in Operating Agency. If at any time during the term of this
10 Subcontract the Contractor and the Operating Agency are not the same entity, the
11 Contractor agrees to coordinate and cooperate with the Operating Agency on any
12 obligations of the Contractor under this Subcontract that pertain to the operation of the
13 Central Arizona Project and delivery of Project Water hereunder.
14

15 6.5 Rules, Regulations, and Determinations.

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

24 (b) Where the terms of this subcontract provide for action to be
25 based upon the opinion or determination of any party to this subcontract, whether or not
26 stated to be conclusive, said terms shall not be construed as permitting such action to be

1 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
2 event that the Contractor or Subcontractor questions any factual determination made by
3 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
4 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
5 parties.

6
7 6.6 Officials Not to Benefit.

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

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

15
16 6.7 Assignment Limited--Successors and Assigns Obligated. The
17 provisions of this subcontract shall apply to and bind the successors and assigns of the
18 parties hereto, but no assignment or transfer of this subcontract or any part or interest
19 therein shall be valid until approved by the Contracting Officer.

20 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
21 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
22 court of the United States or the State of Arizona which would otherwise be available to
23 such parties even though provisions herein may declare that determinations or decisions
24 of the Secretary or other persons are conclusive or (b) as depriving any party of any
25 defense thereto which would otherwise be available.
26

1 6.9 Books, Records, and Reports. The Subcontractor shall establish and
2 maintain accounts and other books and records pertaining to its financial transactions,
3 land use and crop census, water supply, water use, changes of Project works, and to other
4 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
5 Contracting Officer in such form and on such date or dates as he may require. Subject to
6 applicable Federal laws and regulations, each party shall have the right during office hours
7 to examine and make copies of each other's books and records relating to matters covered
8 by this subcontract.
9

10 6.10 Equal Employment Opportunity.

11 During the performance of this subcontract, the Subcontractor agrees as
12 follows:
13

14 (a) The Subcontractor will not discriminate against any employee or
15 applicant for employment because of race, color, religion, sex, sexual orientation, gender
16 identity, or national origin. The Subcontractor will take affirmative action to ensure that
17 applicants are employed, and that employees are treated during employment, without
18 regard to their race, color, religion, sex, sexual orientation, gender identity, or national
19 origin. Such action shall include, but not be limited to the following: employment,
20 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or
21 termination; rates of pay or other forms of compensation; and selection for training,
22 including apprenticeship. The Subcontractor agrees to post in conspicuous places,
23 available to employees and applicants for employment, notices to be provided by the
24 Contracting Officer setting forth the provisions of this nondiscrimination clause.
25
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1 (b) The Subcontractor will, in all solicitations or advancements for
2 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
3 will receive consideration for employment without regard to race, color, religion, sex,
4 sexual orientation, gender identity, or national origin.

5 (c) The Subcontractor will not discharge or in any other manner
6 discriminate against any employee or applicant for employment because such employee
7 or applicant has inquired about, discussed, or disclosed the compensation of the
8 employee or applicant or another employee or applicant. This provision shall not apply to
9 instances in which an employee who has access to the compensation information of other
10 employees or applicants as a part of such employee's essential job functions discloses
11 the compensation of such other employees or applicants to individuals who do not
12 otherwise have access to such information, unless such disclosure is in response to a
13 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
14 action, including an investigation conducted by the employer, or is consistent with the
15 contractor's legal duty to furnish information.
16

17 (d) The Subcontractor will send to each labor union or representative
18 of workers with which he has a collective bargaining agreement or other contract or
19 understanding, a notice, to be provided by the agency Contracting Officer, advising the
20 labor union or workers' representative of the Subcontractor's commitments under section
21 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
22 notice in conspicuous places available to employees and applicants for employment.
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1 (e) The Subcontractor will comply with all provisions of Executive
2 Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of
3 the Secretary of Labor.

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0696 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

TOWN OF QUEEN CREEK, ARIZONA

Attest: _____

Title: _____

By: _____

Title: _____

Approved as to form and as within the authority of the Town of Queen Creek, Arizona:

Scott A. Holcomb, Town Attorney

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE TOWN OF MARANA
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the TOWN OF MARANA hereinafter referred to as the "Subcontractor," with its principal place of business in Marana, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
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26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.

22 (a) Where the Contracting Officer determines the Subcontractor is
23 physically able to receive Colorado River mainstream water through the Project Works in
24 exchange for or in replacement of existing supplies of water from surface sources other
25 than the Colorado River, the Contracting Officer may require that the Subcontractor accept
26

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.
6

7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.
13

14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 515 acre-feet of CAP NIA Priority Water for M&I uses including but not limited
17 to underground storage.
18

19 (b) The Subcontractor's entitlement to CAP NIA Priority Water
20 under this subcontract shall be separate from any other entitlement to Project Water
21 available to the Subcontractor. This Subcontract neither modifies nor supersedes the
22 Subcontractor's existing entitlements or subcontracts, if any.
23

24 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
25 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
26 NIA Priority Water.

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 515 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
26

1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the Town
4 of Marana Water Director, 11555 West Civic Center Drive, Marana, Arizona 85653, on
5 behalf of the United States or Contractor. The designation of the addressee or the address
6 may be changed by notice given in the same manner as provided in this Article for other
7 notices.
8

9 6.4 Change in Operating Agency. If at any time during the term of this
10 Subcontract the Contractor and the Operating Agency are not the same entity, the
11 Contractor agrees to coordinate and cooperate with the Operating Agency on any
12 obligations of the Contractor under this Subcontract that pertain to the operation of the
13 Central Arizona Project and delivery of Project Water hereunder.
14

15 6.5 Rules, Regulations, and Determinations.

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

24 (b) Where the terms of this subcontract provide for action to be
25 based upon the opinion or determination of any party to this subcontract, whether or not
26 stated to be conclusive, said terms shall not be construed as permitting such action to be

1 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
2 event that the Contractor or Subcontractor questions any factual determination made by
3 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
4 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
5 parties.

6
7 6.6 Officials Not to Benefit.

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

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

15
16 6.7 Assignment Limited--Successors and Assigns Obligated. The
17 provisions of this subcontract shall apply to and bind the successors and assigns of the
18 parties hereto, but no assignment or transfer of this subcontract or any part or interest
19 therein shall be valid until approved by the Contracting Officer.

20 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
21 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
22 court of the United States or the State of Arizona which would otherwise be available to
23 such parties even though provisions herein may declare that determinations or decisions
24 of the Secretary or other persons are conclusive or (b) as depriving any party of any
25 defense thereto which would otherwise be available.
26

1 6.9 Books, Records, and Reports. The Subcontractor shall establish and
2 maintain accounts and other books and records pertaining to its financial transactions,
3 land use and crop census, water supply, water use, changes of Project works, and to other
4 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
5 Contracting Officer in such form and on such date or dates as he may require. Subject to
6 applicable Federal laws and regulations, each party shall have the right during office hours
7 to examine and make copies of each other's books and records relating to matters covered
8 by this subcontract.
9

10 6.10 Equal Employment Opportunity.

11 During the performance of this subcontract, the Subcontractor agrees as
12 follows:
13

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

1 (b) The Subcontractor will, in all solicitations or advancements for
2 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
3 will receive consideration for employment without regard to race, color, religion, sex,
4 sexual orientation, gender identity, or national origin.

5 (c) The Subcontractor will not discharge or in any other manner
6 discriminate against any employee or applicant for employment because such employee
7 or applicant has inquired about, discussed, or disclosed the compensation of the
8 employee or applicant or another employee or applicant. This provision shall not apply to
9 instances in which an employee who has access to the compensation information of other
10 employees or applicants as a part of such employee's essential job functions discloses
11 the compensation of such other employees or applicants to individuals who do not
12 otherwise have access to such information, unless such disclosure is in response to a
13 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
14 action, including an investigation conducted by the employer, or is consistent with the
15 contractor's legal duty to furnish information.
16

17 (d) The Subcontractor will send to each labor union or representative
18 of workers with which he has a collective bargaining agreement or other contract or
19 understanding, a notice, to be provided by the agency Contracting Officer, advising the
20 labor union or workers' representative of the Subcontractor's commitments under section
21 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
22 notice in conspicuous places available to employees and applicants for employment.
23
24
25
26

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

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0697 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Secretary

By: _____
President

TOWN OF MARANA

Attest: _____

Title: _____

By: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE APACHE JUNCTION WATER UTILITIES COMMUNITY FACILITIES
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the APACHE JUNCTION WATER UTILITIES COMMUNITY FACILITIES DISTRICT hereinafter referred to as the "Subcontractor," with its principal place of business in Apache Junction, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.

22 (a) Where the Contracting Officer determines the Subcontractor is
23 physically able to receive Colorado River mainstream water through the Project Works in
24 exchange for or in replacement of existing supplies of water from surface sources other
25 than the Colorado River, the Contracting Officer may require that the Subcontractor accept
26

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.
6

7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.
13

14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 817 acre-feet of CAP NIA Priority Water for M&I uses including but not limited
17 to underground storage.
18

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

23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.
26

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 817 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
26

1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the Water
4 District Director, Michael Loggins, 300 East Superstition Blvd., Building D, Apache
5 Junction, Arizona 85119, on behalf of the United States or Contractor. The designation of
6 the addressee or the address may be changed by notice given in the same manner as
7 provided in this Article for other notices.
8

9 6.4 Change in Operating Agency. If at any time during the term of this
10 Subcontract the Contractor and the Operating Agency are not the same entity, the
11 Contractor agrees to coordinate and cooperate with the Operating Agency on any
12 obligations of the Contractor under this Subcontract that pertain to the operation of the
13 Central Arizona Project and delivery of Project Water hereunder.
14

15 6.5 Rules, Regulations, and Determinations.

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

24 (b) Where the terms of this subcontract provide for action to be
25 based upon the opinion or determination of any party to this subcontract, whether or not
26 stated to be conclusive, said terms shall not be construed as permitting such action to be

1 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
2 event that the Contractor or Subcontractor questions any factual determination made by
3 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
4 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
5 parties.

6
7 6.6 Officials Not to Benefit.

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

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

15
16 6.7 Assignment Limited--Successors and Assigns Obligated. The
17 provisions of this subcontract shall apply to and bind the successors and assigns of the
18 parties hereto, but no assignment or transfer of this subcontract or any part or interest
19 therein shall be valid until approved by the Contracting Officer.

20 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
21 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
22 court of the United States or the State of Arizona which would otherwise be available to
23 such parties even though provisions herein may declare that determinations or decisions
24 of the Secretary or other persons are conclusive or (b) as depriving any party of any
25 defense thereto which would otherwise be available.
26

1 6.9 Books, Records, and Reports. The Subcontractor shall establish and
2 maintain accounts and other books and records pertaining to its financial transactions,
3 land use and crop census, water supply, water use, changes of Project works, and to other
4 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
5 Contracting Officer in such form and on such date or dates as he may require. Subject to
6 applicable Federal laws and regulations, each party shall have the right during office hours
7 to examine and make copies of each other's books and records relating to matters covered
8 by this subcontract.
9

10 6.10 Equal Employment Opportunity.

11 During the performance of this subcontract, the Subcontractor agrees as
12 follows:
13

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

1 (b) The Subcontractor will, in all solicitations or advancements for
2 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
3 will receive consideration for employment without regard to race, color, religion, sex,
4 sexual orientation, gender identity, or national origin.

5 (c) The Subcontractor will not discharge or in any other manner
6 discriminate against any employee or applicant for employment because such employee
7 or applicant has inquired about, discussed, or disclosed the compensation of the
8 employee or applicant or another employee or applicant. This provision shall not apply to
9 instances in which an employee who has access to the compensation information of other
10 employees or applicants as a part of such employee's essential job functions discloses
11 the compensation of such other employees or applicants to individuals who do not
12 otherwise have access to such information, unless such disclosure is in response to a
13 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
14 action, including an investigation conducted by the employer, or is consistent with the
15 contractor's legal duty to furnish information.
16

17 (d) The Subcontractor will send to each labor union or representative
18 of workers with which he has a collective bargaining agreement or other contract or
19 understanding, a notice, to be provided by the agency Contracting Officer, advising the
20 labor union or workers' representative of the Subcontractor's commitments under section
21 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
22 notice in conspicuous places available to employees and applicants for employment.
23
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1 (e) The Subcontractor will comply with all provisions of Executive
2 Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of
3 the Secretary of Labor.

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0698 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

**APACHE JUNCTION WATER
UTILITIES COMMUNITY FACILITIES
DISTRICT**

Attest: _____

Title: _____

By: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

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

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the CITY OF EL MIRAGE hereinafter referred to as the "Subcontractor," with its principal place of business in El Mirage, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.
22

23 (a) Where the Contracting Officer determines the Subcontractor is
24 physically able to receive Colorado River mainstream water through the Project Works in
25 exchange for or in replacement of existing supplies of water from surface sources other
26 than the Colorado River, the Contracting Officer may require that the Subcontractor accept

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.
6

7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.
13

14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 1,318 acre-feet of CAP NIA Priority Water for M&I uses including but not
17 limited to underground storage.
18

19 (b) The Subcontractor's entitlement to CAP NIA Priority Water
20 under this subcontract shall be separate from any other entitlement to Project Water
21 available to the Subcontractor. This Subcontract neither modifies nor supersedes the
22 Subcontractor's existing entitlements or subcontracts, if any.
23

24 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
25 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
26 NIA Priority Water.

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 1,318 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
26

1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the City
4 of El Mirage, Mayor Alexis Hermosillo, 10000 North El Mirage Road, El Mirage, Arizona
5 85335, on behalf of the United States or Contractor. The designation of the addressee or
6 the address may be changed by notice given in the same manner as provided in this Article
7 for other notices.
8

9 6.4 Change in Operating Agency. If at any time during the term of this
10 Subcontract the Contractor and the Operating Agency are not the same entity, the
11 Contractor agrees to coordinate and cooperate with the Operating Agency on any
12 obligations of the Contractor under this Subcontract that pertain to the operation of the
13 Central Arizona Project and delivery of Project Water hereunder.
14

15 6.5 Rules, Regulations, and Determinations.

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

24 (b) Where the terms of this subcontract provide for action to be
25 based upon the opinion or determination of any party to this subcontract, whether or not
26 stated to be conclusive, said terms shall not be construed as permitting such action to be

1 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
2 event that the Contractor or Subcontractor questions any factual determination made by
3 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
4 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
5 parties.

6
7 6.6 Officials Not to Benefit.

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

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

15
16 6.7 Assignment Limited--Successors and Assigns Obligated. The
17 provisions of this subcontract shall apply to and bind the successors and assigns of the
18 parties hereto, but no assignment or transfer of this subcontract or any part or interest
19 therein shall be valid until approved by the Contracting Officer.

20 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
21 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
22 court of the United States or the State of Arizona which would otherwise be available to
23 such parties even though provisions herein may declare that determinations or decisions
24 of the Secretary or other persons are conclusive or (b) as depriving any party of any
25 defense thereto which would otherwise be available.
26

1 6.9 Books, Records, and Reports. The Subcontractor shall establish and
2 maintain accounts and other books and records pertaining to its financial transactions,
3 land use and crop census, water supply, water use, changes of Project works, and to other
4 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
5 Contracting Officer in such form and on such date or dates as he may require. Subject to
6 applicable Federal laws and regulations, each party shall have the right during office hours
7 to examine and make copies of each other's books and records relating to matters covered
8 by this subcontract.
9

10 6.10 Equal Employment Opportunity.

11 During the performance of this subcontract, the Subcontractor agrees as
12 follows:
13

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

1 (b) The Subcontractor will, in all solicitations or advancements for
2 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
3 will receive consideration for employment without regard to race, color, religion, sex,
4 sexual orientation, gender identity, or national origin.

5 (c) The Subcontractor will not discharge or in any other manner
6 discriminate against any employee or applicant for employment because such employee
7 or applicant has inquired about, discussed, or disclosed the compensation of the
8 employee or applicant or another employee or applicant. This provision shall not apply to
9 instances in which an employee who has access to the compensation information of other
10 employees or applicants as a part of such employee's essential job functions discloses
11 the compensation of such other employees or applicants to individuals who do not
12 otherwise have access to such information, unless such disclosure is in response to a
13 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
14 action, including an investigation conducted by the employer, or is consistent with the
15 contractor's legal duty to furnish information.
16

17 (d) The Subcontractor will send to each labor union or representative
18 of workers with which he has a collective bargaining agreement or other contract or
19 understanding, a notice, to be provided by the agency Contracting Officer, advising the
20 labor union or workers' representative of the Subcontractor's commitments under section
21 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
22 notice in conspicuous places available to employees and applicants for employment.
23
24
25
26

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

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0699 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

CITY OF EL MIRAGE

Attest: _____

Title: _____

By: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE TOWN OF GILBERT
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____,
in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory
thereof or supplementary thereto, including but not limited to the Boulder Canyon Project
Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of
August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12,
1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September
30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat.
3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws,"
among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States"
or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL
ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the
"Contractor," a water conservation district organized under the laws of Arizona, with its
principal place of business in Phoenix, Arizona, and the TOWN OF GILBERT hereinafter
referred to as the "Subcontractor," with its principal place of business in Gilbert, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.

22 (a) Where the Contracting Officer determines the Subcontractor is
23 physically able to receive Colorado River mainstream water through the Project Works in
24 exchange for or in replacement of existing supplies of water from surface sources other
25 than the Colorado River, the Contracting Officer may require that the Subcontractor accept
26

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.

6
7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.

13
14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 1,832 acre-feet of CAP NIA Priority Water for M&I uses including but not
17 limited to underground storage.

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

22
23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 1,832 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
26

1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the Town
4 Manager, Town of Gilbert, 50 East Civic Center Drive, Gilbert, Arizona 85296, on behalf
5 of the United States or Contractor. The designation of the addressee or the address may
6 be changed by notice given in the same manner as provided in this Article for other
7 notices.
8

9 6.4 Change in Operating Agency. If at any time during the term of this
10 Subcontract the Contractor and the Operating Agency are not the same entity, the
11 Contractor agrees to coordinate and cooperate with the Operating Agency on any
12 obligations of the Contractor under this Subcontract that pertain to the operation of the
13 Central Arizona Project and delivery of Project Water hereunder.
14

15 6.5 Rules, Regulations, and Determinations.

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

24 (b) Where the terms of this subcontract provide for action to be
25 based upon the opinion or determination of any party to this subcontract, whether or not
26 stated to be conclusive, said terms shall not be construed as permitting such action to be

1 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
2 event that the Contractor or Subcontractor questions any factual determination made by
3 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
4 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
5 parties.

6
7 6.6 Officials Not to Benefit.

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

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

15
16 6.7 Assignment Limited--Successors and Assigns Obligated. The
17 provisions of this subcontract shall apply to and bind the successors and assigns of the
18 parties hereto, but no assignment or transfer of this subcontract or any part or interest
19 therein shall be valid until approved by the Contracting Officer.

20 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
21 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
22 court of the United States or the State of Arizona which would otherwise be available to
23 such parties even though provisions herein may declare that determinations or decisions
24 of the Secretary or other persons are conclusive or (b) as depriving any party of any
25 defense thereto which would otherwise be available.
26

1 6.9 Books, Records, and Reports. The Subcontractor shall establish and
2 maintain accounts and other books and records pertaining to its financial transactions,
3 land use and crop census, water supply, water use, changes of Project works, and to other
4 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
5 Contracting Officer in such form and on such date or dates as he may require. Subject to
6 applicable Federal laws and regulations, each party shall have the right during office hours
7 to examine and make copies of each other's books and records relating to matters covered
8 by this subcontract.
9

10 6.10 Equal Employment Opportunity.

11 During the performance of this subcontract, the Subcontractor agrees as
12 follows:
13

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

1 (b) The Subcontractor will, in all solicitations or advancements for
2 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
3 will receive consideration for employment without regard to race, color, religion, sex,
4 sexual orientation, gender identity, or national origin.

5 (c) The Subcontractor will not discharge or in any other manner
6 discriminate against any employee or applicant for employment because such employee
7 or applicant has inquired about, discussed, or disclosed the compensation of the
8 employee or applicant or another employee or applicant. This provision shall not apply to
9 instances in which an employee who has access to the compensation information of other
10 employees or applicants as a part of such employee's essential job functions discloses
11 the compensation of such other employees or applicants to individuals who do not
12 otherwise have access to such information, unless such disclosure is in response to a
13 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
14 action, including an investigation conducted by the employer, or is consistent with the
15 contractor's legal duty to furnish information.
16

17 (d) The Subcontractor will send to each labor union or representative
18 of workers with which he has a collective bargaining agreement or other contract or
19 understanding, a notice, to be provided by the agency Contracting Officer, advising the
20 labor union or workers' representative of the Subcontractor's commitments under section
21 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
22 notice in conspicuous places available to employees and applicants for employment.
23
24
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1 (e) The Subcontractor will comply with all provisions of Executive
2 Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of
3 the Secretary of Labor.

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0700 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

TOWN OF GILBERT

Attest: _____

By: _____

Title: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

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

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____,
in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory
thereof or supplementary thereto, including but not limited to the Boulder Canyon Project
Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of
August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12,
1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September
30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat.
3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws,"
among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States"
or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL
ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the
"Contractor," a water conservation district organized under the laws of Arizona, with its
principal place of business in Phoenix, Arizona, and the CITY OF BUCKEYE hereinafter
referred to as the "Subcontractor," with its principal place of business in Buckeye, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.

22 (a) Where the Contracting Officer determines the Subcontractor is
23 physically able to receive Colorado River mainstream water through the Project Works in
24 exchange for or in replacement of existing supplies of water from surface sources other
25 than the Colorado River, the Contracting Officer may require that the Subcontractor accept
26

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.

6
7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.

13
14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 2,786 acre-feet of CAP NIA Priority Water for M&I uses including but not
17 limited to underground storage.

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

22
23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 2,786 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
26

1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the City
4 of Buckeye, Attn: Roger Klingler, City Manager, 530 East Monroe Avenue, Buckeye,
5 Arizona 85326 with a copy to Alisha Solano, Water Resources Director, 21749 West Yuma
6 Road, Suite 107, Buckeye, Arizona 85326, on behalf of the United States or Contractor.
7
8 The designation of the addressee or the address may be changed by notice given in the
9 same manner as provided in this Article for other notices.

10 6.4 Change in Operating Agency. If at any time during the term of this
11 Subcontract the Contractor and the Operating Agency are not the same entity, the
12 Contractor agrees to coordinate and cooperate with the Operating Agency on any
13 obligations of the Contractor under this Subcontract that pertain to the operation of the
14 Central Arizona Project and delivery of Project Water hereunder.
15

16 6.5 Rules, Regulations, and Determinations.

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

25 (b) Where the terms of this subcontract provide for action to be
26 based upon the opinion or determination of any party to this subcontract, whether or not

1 stated to be conclusive, said terms shall not be construed as permitting such action to be
2 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
3 event that the Contractor or Subcontractor questions any factual determination made by
4 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
5 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
6 parties.
7

8 6.6 Officials Not to Benefit.

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

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

17 6.7 Assignment Limited--Successors and Assigns Obligated. The
18 provisions of this subcontract shall apply to and bind the successors and assigns of the
19 parties hereto, but no assignment or transfer of this subcontract or any part or interest
20 therein shall be valid until approved by the Contracting Officer.
21

22 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
23 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
24 court of the United States or the State of Arizona which would otherwise be available to
25 such parties even though provisions herein may declare that determinations or decisions
26

1 of the Secretary or other persons are conclusive or (b) as depriving any party of any
2 defense thereto which would otherwise be available.

3 6.9 Books, Records, and Reports. The Subcontractor shall establish and
4 maintain accounts and other books and records pertaining to its financial transactions,
5 land use and crop census, water supply, water use, changes of Project works, and to other
6 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
7 Contracting Officer in such form and on such date or dates as he may require. Subject to
8 applicable Federal laws and regulations, each party shall have the right during office hours
9 to examine and make copies of each other's books and records relating to matters covered
10 by this subcontract.
11

12 6.10 Equal Employment Opportunity.

13 During the performance of this subcontract, the Subcontractor agrees as
14 follows:
15

16 (a) The Subcontractor will not discriminate against any employee or
17 applicant for employment because of race, color, religion, sex, sexual orientation, gender
18 identity, or national origin. The Subcontractor will take affirmative action to ensure that
19 applicants are employed, and that employees are treated during employment, without
20 regard to their race, color, religion, sex, sexual orientation, gender identity, or national
21 origin. Such action shall include, but not be limited to the following: employment,
22 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or
23 termination; rates of pay or other forms of compensation; and selection for training,
24 including apprenticeship. The Subcontractor agrees to post in conspicuous places,
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1 available to employees and applicants for employment, notices to be provided by the
2 Contracting Officer setting forth the provisions of this nondiscrimination clause.

3 (b) The Subcontractor will, in all solicitations or advancements for
4 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
5 will receive consideration for employment without regard to race, color, religion, sex,
6 sexual orientation, gender identity, or national origin.

7
8 (c) The Subcontractor will not discharge or in any other manner
9 discriminate against any employee or applicant for employment because such employee
10 or applicant has inquired about, discussed, or disclosed the compensation of the
11 employee or applicant or another employee or applicant. This provision shall not apply to
12 instances in which an employee who has access to the compensation information of other
13 employees or applicants as a part of such employee's essential job functions discloses
14 the compensation of such other employees or applicants to individuals who do not
15 otherwise have access to such information, unless such disclosure is in response to a
16 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
17 action, including an investigation conducted by the employer, or is consistent with the
18 contractor's legal duty to furnish information.

19
20 (d) The Subcontractor will send to each labor union or representative
21 of workers with which he has a collective bargaining agreement or other contract or
22 understanding, a notice, to be provided by the agency Contracting Officer, advising the
23 labor union or workers' representative of the Subcontractor's commitments under section
24 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
25 notice in conspicuous places available to employees and applicants for employment.
26

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

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0701 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

CITY OF BUCKEYE

Attest: _____

Title: _____

By: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT BETWEEN THE UNITED STATES AND
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

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

CENTRAL ARIZONA GROUNDWATER REPLENISHMENT DISTRICT shall be referred to herein as the "Subcontractor";

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of

1 Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M
2 Transfer Agreement"), CAWCD is the Operating Agency.

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

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

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

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

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

25 **WHEREAS**, the Subcontractor is in need of a water supply to fulfill its
26 groundwater replenishment obligations and desires to subcontract with the United States

1 and the Contractor for water service from CAP NIA Priority Water supplies available under
2 the Central Arizona Project; and

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

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

7 **3. DEFINITIONS:**

8 Definitions included in the Repayment Contract and the Stipulation are
9 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
10 In addition, the following definitions shall apply to this subcontract

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

15 (b) "CAP Indian Priority Water" shall mean that water within the Available
16 CAP Supply having an Indian delivery priority.

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

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

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

24 (f) "System Use Agreement" shall mean the Central Arizona Project
25 System Use Agreement between the United States and the Central Arizona Water
26

1 Conservation District, Agreement No. 17-XX-30-W0622, dated February 2, 2017,
2 including any amendments thereto.

3 **4. DELIVERY OF WATER:**

4 4.1 Obligations of the United States.

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

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

18 4.2 Term of Subcontract. This subcontract shall become effective upon
19 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
20 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
21 water service capital charges and 9(d) debt charges as required by the Contractor. This
22 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
23 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
24 terms of this subcontract for a period of 100 years beginning January 1 of the Year
25 following that in which the subcontract becomes effective; provided, that this subcontract
26 may be renewed upon written request by the Subcontractor upon terms and conditions of

1 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
2 and provided, further, that such terms and conditions shall be consistent with Article 9.9
3 of the Repayment Contract.

4 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
5 under this subcontract is conditioned on the following, and the Subcontractor hereby
6 agrees that:

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

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

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

1 transportation of ground water is in accord with Title 45, Chapter 2, Arizona Revised
2 Statutes, as it may be amended from time to time.

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

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

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

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

6 (f) Notwithstanding any other provision of this subcontract,
7 Project Water shall not be delivered to the Subcontractor unless and until the
8 Subcontractor has obtained final environmental clearance from the United States for the
9 system or systems through which Project Water is to be conveyed after delivery to the
10 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
11 distribution systems, treatment, storage, and other facilities through or in which Project
12 Water is conveyed, stored, or treated after delivery to the Subcontractor at the
13 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
14 based upon a review by the United States of the Subcontractor's plans for taking and using
15 Project Water and will be given or withheld by the United States in accordance with the
16 Final Environmental Assessment - Arizona Department of Water Resources
17 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
18 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
19 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
20 action(s) required on behalf of the Subcontractor in order to obtain final environmental
21 clearance from the United States will be identified to the Subcontractor by the United
22 States, and no Project Water shall be delivered to the Subcontractor unless and until the
23 Subcontractor has completed all such action(s) to the satisfaction of the United States.
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1 4.4 Procedure for Ordering Water.

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

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

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

17 (iii) If the Contracting Officer determines, in consultation
18 with the Operating Agency, that the amount of Project Water that will be available for
19 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
20 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
21 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
22 Subcontractor for that following Year. Within five (5) business days of such notice, the
23 Subcontractor shall submit an amended water delivery schedule to the Contractor
24 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
25 following Year up to the reduced quantity available. Upon receipt of the amended
26 schedule, the Contractor shall review it and, after consultation with the Subcontractor,

1 shall make only such modifications to the schedule as are necessary to ensure that the
2 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
3 capability of the Project, considering, among other things, the availability of water, the
4 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
5 provided, that this provision shall not be construed to reduce annual deliveries to the
6 Subcontractor, except as required by Article 4.7.

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

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

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

23 (d) In no event shall the Contracting Officer or the Contractor be
24 required to deliver to the Subcontractor from the Water Supply System in any one month
25 a total amount of Project Water greater than eleven percent (11%) of the Subcontractor's
26 maximum entitlement; provided, however, that the Contractor may deliver a greater

1 percentage in any month if such increased delivery is compatible with the overall delivery
2 of Project Water as determined by the Contracting Officer and the Contractor and if the
3 Subcontractor agrees to accept such increased deliveries.

4 4.5 Points of Delivery--Measurement and Responsibility for Distribution
5 of Water.

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

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

21 (c) All water delivered from the Water Supply System shall be
22 measured with equipment furnished, installed, operated and maintained by the United
23 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
24 the accuracy of such measurements shall be investigated by the Contracting Officer or the
25 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
26 determined to have occurred therein shall be adjusted; provided, that in the event the

1 parties cannot agree on the required adjustment, the Contracting Officer's determination
2 shall be conclusive.

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

11 4.6 Temporary Reductions. In addition to the right of the United States
12 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
13 the amount of water to be delivered, the United States or the Operating Agency may, after
14 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce
15 the quantity of water to be furnished to the Subcontractor as herein provided for the
16 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
17 Project facilities or any part thereof necessary for the furnishing of water to the
18 Subcontractor, but so far as feasible the United States or the Operating Agency shall
19 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
20 Subcontractor due notice in advance of such temporary discontinuance or reduction,
21 except in case of emergency, in which case no notice need be given. Neither the United
22 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
23 and employees, shall be liable for damages when, for any reason whatsoever, any such
24 temporary discontinuance or reduction in delivery of water occurs. If any such
25 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
26

1 water than what has been paid for in advance, the Contractor shall reconcile any such
2 advance payments as provided in Subarticle 5.1(c).
3

4 4.7 Priority in Case of Shortage. As soon as is practicable after October
5 1, the Contracting Officer shall determine, in consultation with the Operating Agency, the
6 availability of CAP NIA Priority Water consistent with the Available CAP Supply and
7 delivery schedules submitted by CAP contractors and subcontractors. The determination
8 of such supply shall be consistent with the AWSA and Paragraph 4 of Amendment 2 to
9 the Repayment Contract dated November 30, 2007, as set forth in Exhibit A.
10

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

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

23 (c) Any CAP NIA Priority Water remaining after the pro-rata
24 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
25 Contractors and Subcontractors pro-rata on the basis of the difference between the
26

1 volume of water requested for delivery and the volume of water distributed under
2 Subarticle 4.7(b).

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

7 4.8 Secretarial Control of Return Flow.

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

22 (i) The name and address of the prospective buyer.

23 (ii) The location and proposed use of the Return Flow.

24 (iii) The price to be charged for the Return Flow.

25 (b) The price charged for the Return Flow may cover the cost
26 incurred by the Subcontractor for Project Water plus the cost required to make the Return

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

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

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

20 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
21 this subcontract, shall comply with all applicable water and air pollution laws and
22 regulations of the United States and the State of Arizona and shall obtain all required
23 permits or licenses from the appropriate Federal, State, or local authorities.
24

25 4.10 Quality of Water. The operation and maintenance of Project facilities
26 shall be performed in such manner as is practicable to maintain the quality of water made

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

9 4.11 Exchange Water.

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

20 (b) If, in the event of reductions to the Available CAP Supply, the
21 Subcontractor has yielded water from other surface water sources in exchange for
22 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
23 the Subcontractor shall have first priority against other users supplied with Project Water
24 that have not yielded water from other surface water sources but only in quantities
25 adequate to replace the water so yielded.
26

1 4.12 Entitlement to CAP NIA Priority Water.

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

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

9
10 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
11 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
12 NIA Priority Water.

13 **5. PAYMENTS:**

14 5.1 Water Service Charges for Payment of Operation, Maintenance, and
15 Replacement Costs.

16
17 (a) Prior to October 1 of each Year, the Contractor shall notify the
18 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
19 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
20 shall be accompanied by data and computations relied on by the Contractor in determining
21 the amounts of the estimated OM&R costs and shall be subject to joint review by the
22 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
23 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
24 to cover the above-mentioned costs during such period, the Contractor may, at the
25 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
26

1 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
2 all remaining monthly invoices.

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

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

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

20 5.2 M&I Water Service Charges.

21 (a) Subject to the provisions of Article 5.4 hereof and in addition
22 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
23 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
24 make payment to the Contractor in equal semiannual installments of an M&I Water service
25

1 capital charge based on a maximum entitlement of 18,185 acre-feet per year multiplied by
2 the rate established by the Contractor for that year.

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

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

22 (d) All payments to be made to the Contractor or the United States
23 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
24

1 fall due from revenues legally available to the Subcontractor for such payment from the
2 sale of water to its water users and from any and all other sources which might be legally
3 available; Provided, That no portion of the general taxing authority of the Subcontractor,
4 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
5 this subcontract, nor shall such sources be liable for the payments, contributions, and
6 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
7 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
8 applicable budget year; and Provided, further, That no portion of this agreement shall ever
9 be construed to create an obligation superior in lien to or on a parity with the
10 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
11 impose such necessary water service charges and rates and use all the authority and
12 resources available to it to collect all such necessary water service charges and rates in
13 order that the Subcontractor may meet its obligations hereunder and make in full all
14 payments required under this subcontract on or before the date such payments become
15 due.
16
17

18 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
19 of water under this Subcontract from Project facilities during any period in which the
20 Subcontractor may be in arrears in the payment of any charges due the Contractor under
21 this Subcontract. The Contractor may sell to another entity any water determined to be
22 available under the Subcontractor's entitlement for which payment is in arrears; provided,
23 however, that the Subcontractor may regain the right to use any unsold portion of the water
24 determined to be available under the original entitlement upon payment of all delinquent
25
26

1 charges plus any difference between the subcontractual obligation and the price received
2 in the sale of the water by the Contractor and payment of charges for the current period.

3 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
4 refuses in any Year to accept delivery of the quantity of water available for delivery to and
5 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
6 refusal shall not relieve the Subcontractor of its obligation to make the payments required
7 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
8 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
9 regardless of the quantity of water scheduled or available for delivery in any Year.
10

11 5.5 Charge for Late Payments. The Subcontractor shall pay a late
12 payment charge on installments or charges that are received after the due date. The late
13 payment charge percentage rate calculated by the Department of the Treasury and
14 published quarterly in the Federal Register shall be used; provided, that the late payment
15 charge percentage rate shall not be less than 0.5 percent per month. The late payment
16 charge percentage rate applied on an overdue payment shall remain in effect until
17 payment is received. The late payment rate for a 30-day period shall be determined on
18 the day immediately following the due date and shall be applied to the overdue payment
19 for any portion of the 30-day period of delinquency. In the case of partial late payments,
20 the amount received shall first be applied to the late charge on the overdue payment and
21 then to the overdue payment.
22
23

24 **6. GENERAL PROVISIONS:**

25 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
26 Repayment Contract, the United States has agreed to construct and, in the absence of an

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

10 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
11 exchanges with Indian entities that have received an allocation of Project Water and
12 receive all benefits from the exchange.

13 6.3 Notices. Any notice, demand or request authorized or required by
14 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
15 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,
16 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
17 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
18 Phoenix, Arizona 85080, on behalf of the United States. The designation of the addressee
19 or the address may be changed by notice given in the same manner as provided in this
20 Article for other notices.
21

22 6.4 Change in Operating Agency. If at any time during the term of this
23 Subcontract the Contractor and the Operating Agency are not the same entity, the
24 Contractor agrees to coordinate and cooperate with the Operating Agency on any
25
26

1 obligations of the Contractor under this Subcontract that pertain to the operation of the
2 Central Arizona Project and delivery of Project Water hereunder.

3 6.5 Rules, Regulations, and Determinations.

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

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

19 6.6 Officials Not to Benefit.

20 (a) No Member of or Delegate to Congress or Resident
21 Commissioner shall be admitted to any share or part of this subcontract or to any benefit
22 that may arise herefrom. This restriction shall not be construed to extend to this
23 subcontract if made with a corporation or company for its general benefit.
24
25
26

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

4 6.7 Assignment Limited--Successors and Assigns Obligated. The
5 provisions of this subcontract shall apply to and bind the successors and assigns of the
6 parties hereto, but no assignment or transfer of this subcontract or any part or interest
7 therein shall be valid until approved by the Contracting Officer.
8

9 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
10 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
11 court of the United States or the State of Arizona which would otherwise be available to
12 such parties even though provisions herein may declare that determinations or decisions
13 of the Secretary or other persons are conclusive or (b) as depriving any party of any
14 defense thereto which would otherwise be available.
15

16 6.9 Books, Records, and Reports. The Subcontractor shall establish and
17 maintain accounts and other books and records pertaining to its financial transactions,
18 land use and crop census, water supply, water use, changes of Project works, and to other
19 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
20 Contracting Officer in such form and on such date or dates as he may require. Subject to
21 applicable Federal laws and regulations, each party shall have the right during office hours
22 to examine and make copies of each other's books and records relating to matters covered
23 by this subcontract.
24
25
26

1 6.10 Equal Employment Opportunity.

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

4 (a) The Subcontractor will not discriminate against any employee or
5 applicant for employment because of race, color, religion, sex, sexual orientation, gender
6 identity, or national origin. The Subcontractor will take affirmative action to ensure that
7 applicants are employed, and that employees are treated during employment, without
8 regard to their race, color, religion, sex, sexual orientation, gender identity, or national
9 origin. Such action shall include, but not be limited to the following: employment,
10 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or
11 termination; rates of pay or other forms of compensation; and selection for training,
12 including apprenticeship. The Subcontractor agrees to post in conspicuous places,
13 available to employees and applicants for employment, notices to be provided by the
14 Contracting Officer setting forth the provisions of this nondiscrimination clause.
15
16

17 (b) The Subcontractor will, in all solicitations or advancements for
18 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
19 will receive consideration for employment without regard to race, color, religion, sex,
20 sexual orientation, gender identity, or national origin.
21

22 (c) The Subcontractor will not discharge or in any other manner
23 discriminate against any employee or applicant for employment because such employee
24 or applicant has inquired about, discussed, or disclosed the compensation of the
25 employee or applicant or another employee or applicant. This provision shall not apply to
26 instances in which an employee who has access to the compensation information of other

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

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

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

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

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

1 Subcontractor may be declared ineligible for further Government contracts in accordance
2 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
3 other sanctions may be imposed and remedies invoked as provided in Executive Order
4 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
5 or as otherwise provided by law.
6

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

19 6.11 Compliance With Civil Rights Laws and Regulations

20 (a) The Subcontractor shall comply with Title VI of the Civil Rights
21 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
22 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
23 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with
24 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other
25
26

1 applicable civil rights laws, and with the applicable implementing regulations and any
2 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties hereto have executed this subcontract
No. 21-XX-30-W0703 the day and year first above-written.

THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: Terry Goddard
President

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE VIEWPOINT RV AND GOLF RESORT
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the MHC VIEWPOINT, L.L.C., a Delaware limited liability company, dba VIEWPOINT RV AND GOLF RESORT, hereinafter referred to as the "Subcontractor," with its principal place of business in Mesa, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.

22 (a) Where the Contracting Officer determines the Subcontractor is
23 physically able to receive Colorado River mainstream water through the Project Works in
24 exchange for or in replacement of existing supplies of water from surface sources other
25 than the Colorado River, the Contracting Officer may require that the Subcontractor accept
26

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.

6
7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.

13
14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 400 acre-feet of CAP NIA Priority Water for M&I uses including but not limited
17 to underground storage.

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

22
23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 400 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
26

1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the MHC
4 Viewpoint, L.L.C., Attn: Ron Bunce, Senior Vice President, 7310 N. 16th Street, Suite 300,
5 Phoenix, Arizona 85020, on behalf of the United States or Contractor. The designation of
6 the addressee or the address may be changed by notice given in the same manner as
7 provided in this Article for other notices.
8

9 6.4 Change in Operating Agency. If at any time during the term of this
10 Subcontract the Contractor and the Operating Agency are not the same entity, the
11 Contractor agrees to coordinate and cooperate with the Operating Agency on any
12 obligations of the Contractor under this Subcontract that pertain to the operation of the
13 Central Arizona Project and delivery of Project Water hereunder.
14

15 6.5 Rules, Regulations, and Determinations.

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

24 (b) Where the terms of this subcontract provide for action to be
25 based upon the opinion or determination of any party to this subcontract, whether or not
26 stated to be conclusive, said terms shall not be construed as permitting such action to be

1 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
2 event that the Contractor or Subcontractor questions any factual determination made by
3 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
4 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
5 parties.

6
7 6.6 Officials Not to Benefit.

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

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

15
16 6.7 Assignment Limited--Successors and Assigns Obligated. The
17 provisions of this subcontract shall apply to and bind the successors and assigns of the
18 parties hereto, but no assignment or transfer of this subcontract or any part or interest
19 therein shall be valid until approved by the Contracting Officer.

20 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
21 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
22 court of the United States or the State of Arizona which would otherwise be available to
23 such parties even though provisions herein may declare that determinations or decisions
24 of the Secretary or other persons are conclusive or (b) as depriving any party of any
25 defense thereto which would otherwise be available.
26

1 6.9 Books, Records, and Reports. The Subcontractor shall establish and
2 maintain accounts and other books and records pertaining to its financial transactions,
3 land use and crop census, water supply, water use, changes of Project works, and to other
4 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
5 Contracting Officer in such form and on such date or dates as he may require. Subject to
6 applicable Federal laws and regulations, each party shall have the right during office hours
7 to examine and make copies of each other's books and records relating to matters covered
8 by this subcontract.
9

10 6.10 Equal Employment Opportunity.

11 During the performance of this subcontract, the Subcontractor agrees as
12 follows:
13

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

1 (b) The Subcontractor will, in all solicitations or advancements for
2 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
3 will receive consideration for employment without regard to race, color, religion, sex,
4 sexual orientation, gender identity, or national origin.

5 (c) The Subcontractor will not discharge or in any other manner
6 discriminate against any employee or applicant for employment because such employee
7 or applicant has inquired about, discussed, or disclosed the compensation of the
8 employee or applicant or another employee or applicant. This provision shall not apply to
9 instances in which an employee who has access to the compensation information of other
10 employees or applicants as a part of such employee's essential job functions discloses
11 the compensation of such other employees or applicants to individuals who do not
12 otherwise have access to such information, unless such disclosure is in response to a
13 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
14 action, including an investigation conducted by the employer, or is consistent with the
15 contractor's legal duty to furnish information.
16

17 (d) The Subcontractor will send to each labor union or representative
18 of workers with which he has a collective bargaining agreement or other contract or
19 understanding, a notice, to be provided by the agency Contracting Officer, advising the
20 labor union or workers' representative of the Subcontractor's commitments under section
21 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
22 notice in conspicuous places available to employees and applicants for employment.
23
24
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1 (e) The Subcontractor will comply with all provisions of Executive
2 Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of
3 the Secretary of Labor.

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title III of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0704 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

VIEWPOINT RV AND GOLF RESORT

Attest: _____

By: _____

Title: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE NEW HARQUAHALA GENERATING COMPANY, L.L.C.
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the NEW HARQUAHALA GENERATING COMPANY, L.L.C., hereinafter referred to as the "Subcontractor," with its principal place of business in Maricopa County, Arizona;

1 **WITNESSETH, THAT:**

2 **2. EXPLANATORY RECITALS:**

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

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

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

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

24 **WHEREAS**, as of the date of execution of this Subcontract, and pursuant
25 to the provisions of the Contract between the United States of America and the Central
26 Arizona Water Conservation District for the Transfer of Operation and Maintenance of
Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M
Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.

22 (a) Where the Contracting Officer determines the Subcontractor is
23 physically able to receive Colorado River mainstream water through the Project Works in
24 exchange for or in replacement of existing supplies of water from surface sources other
25 than the Colorado River, the Contracting Officer may require that the Subcontractor accept
26

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.

6
7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.

13
14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 400 acre-feet of CAP NIA Priority Water for M&I uses including but not limited
17 to underground storage.

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

22
23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 400 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
26

1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the New
4 Harquahala Generating Company, L.L.C., 7600 Wisconsin Avenue, Bethesda, Maryland
5 20814, on behalf of the United States or Contractor. The designation of the addressee or
6 the address may be changed by notice given in the same manner as provided in this Article
7 for other notices.
8

9 6.4 Change in Operating Agency. If at any time during the term of this
10 Subcontract the Contractor and the Operating Agency are not the same entity, the
11 Contractor agrees to coordinate and cooperate with the Operating Agency on any
12 obligations of the Contractor under this Subcontract that pertain to the operation of the
13 Central Arizona Project and delivery of Project Water hereunder.
14

15 6.5 Rules, Regulations, and Determinations.

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

24 (b) Where the terms of this subcontract provide for action to be
25 based upon the opinion or determination of any party to this subcontract, whether or not
26 stated to be conclusive, said terms shall not be construed as permitting such action to be

1 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
2 event that the Contractor or Subcontractor questions any factual determination made by
3 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
4 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
5 parties.

6
7 6.6 Officials Not to Benefit.

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

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

15
16 6.7 Assignment Limited--Successors and Assigns Obligated. The
17 provisions of this subcontract shall apply to and bind the successors and assigns of the
18 parties hereto, but no assignment or transfer of this subcontract or any part or interest
19 therein shall be valid until approved by the Contracting Officer.

20 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
21 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
22 court of the United States or the State of Arizona which would otherwise be available to
23 such parties even though provisions herein may declare that determinations or decisions
24 of the Secretary or other persons are conclusive or (b) as depriving any party of any
25 defense thereto which would otherwise be available.
26

1 6.9 Books, Records, and Reports. The Subcontractor shall establish and
2 maintain accounts and other books and records pertaining to its financial transactions,
3 land use and crop census, water supply, water use, changes of Project works, and to other
4 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
5 Contracting Officer in such form and on such date or dates as he may require. Subject to
6 applicable Federal laws and regulations, each party shall have the right during office hours
7 to examine and make copies of each other's books and records relating to matters covered
8 by this subcontract.
9

10 6.10 Equal Employment Opportunity.

11 During the performance of this subcontract, the Subcontractor agrees as
12 follows:
13

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

1 (b) The Subcontractor will, in all solicitations or advancements for
2 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
3 will receive consideration for employment without regard to race, color, religion, sex,
4 sexual orientation, gender identity, or national origin.

5 (c) The Subcontractor will not discharge or in any other manner
6 discriminate against any employee or applicant for employment because such employee
7 or applicant has inquired about, discussed, or disclosed the compensation of the
8 employee or applicant or another employee or applicant. This provision shall not apply to
9 instances in which an employee who has access to the compensation information of other
10 employees or applicants as a part of such employee's essential job functions discloses
11 the compensation of such other employees or applicants to individuals who do not
12 otherwise have access to such information, unless such disclosure is in response to a
13 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
14 action, including an investigation conducted by the employer, or is consistent with the
15 contractor's legal duty to furnish information.
16

17 (d) The Subcontractor will send to each labor union or representative
18 of workers with which he has a collective bargaining agreement or other contract or
19 understanding, a notice, to be provided by the agency Contracting Officer, advising the
20 labor union or workers' representative of the Subcontractor's commitments under section
21 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
22 notice in conspicuous places available to employees and applicants for employment.
23
24
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1 (e) The Subcontractor will comply with all provisions of Executive
2 Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of
3 the Secretary of Labor.

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title III of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0705 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

**NEW HARQUAHALA GENERATING
COMPANY, L.L.C.**

Attest: _____

Title: _____

By: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE ROSEMONT COPPER COMPANY
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the ROSEMONT COPPER COMPANY hereinafter referred to as the "Subcontractor," with its principal place of business in Tucson, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.

22 (a) Where the Contracting Officer determines the Subcontractor is
23 physically able to receive Colorado River mainstream water through the Project Works in
24 exchange for or in replacement of existing supplies of water from surface sources other
25 than the Colorado River, the Contracting Officer may require that the Subcontractor accept
26

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.

6
7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.

13
14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 1,124 acre-feet of CAP NIA Priority Water for M&I uses including but not
17 limited to underground storage.

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

22
23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 1,124 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
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1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the
4 Rosemont Copper Company, Attn: Legal Department, 5255 East Williams Circle, Suite
5 1065, Tucson, Arizona 85711, on behalf of the United States or Contractor. The
6 designation of the addressee or the address may be changed by notice given in the same
7 manner as provided in this Article for other notices.
8

9 6.4 Change in Operating Agency. If at any time during the term of this
10 Subcontract the Contractor and the Operating Agency are not the same entity, the
11 Contractor agrees to coordinate and cooperate with the Operating Agency on any
12 obligations of the Contractor under this Subcontract that pertain to the operation of the
13 Central Arizona Project and delivery of Project Water hereunder.
14

15 6.5 Rules, Regulations, and Determinations.

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

24 (b) Where the terms of this subcontract provide for action to be
25 based upon the opinion or determination of any party to this subcontract, whether or not
26 stated to be conclusive, said terms shall not be construed as permitting such action to be

1 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
2 event that the Contractor or Subcontractor questions any factual determination made by
3 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
4 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
5 parties.

6
7 6.6 Officials Not to Benefit.

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

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

15
16 6.7 Assignment Limited--Successors and Assigns Obligated. The
17 provisions of this subcontract shall apply to and bind the successors and assigns of the
18 parties hereto, but no assignment or transfer of this subcontract or any part or interest
19 therein shall be valid until approved by the Contracting Officer.

20 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
21 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
22 court of the United States or the State of Arizona which would otherwise be available to
23 such parties even though provisions herein may declare that determinations or decisions
24 of the Secretary or other persons are conclusive or (b) as depriving any party of any
25 defense thereto which would otherwise be available.
26

1 6.9 Books, Records, and Reports. The Subcontractor shall establish and
2 maintain accounts and other books and records pertaining to its financial transactions,
3 land use and crop census, water supply, water use, changes of Project works, and to other
4 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
5 Contracting Officer in such form and on such date or dates as he may require. Subject to
6 applicable Federal laws and regulations, each party shall have the right during office hours
7 to examine and make copies of each other's books and records relating to matters covered
8 by this subcontract.
9

10 6.10 Equal Employment Opportunity.

11 During the performance of this subcontract, the Subcontractor agrees as
12 follows:
13

14 (a) The Subcontractor will not discriminate against any employee or
15 applicant for employment because of race, color, religion, sex, sexual orientation, gender
16 identity, or national origin. The Subcontractor will take affirmative action to ensure that
17 applicants are employed, and that employees are treated during employment, without
18 regard to their race, color, religion, sex, sexual orientation, gender identity, or national
19 origin. Such action shall include, but not be limited to the following: employment,
20 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or
21 termination; rates of pay or other forms of compensation; and selection for training,
22 including apprenticeship. The Subcontractor agrees to post in conspicuous places,
23 available to employees and applicants for employment, notices to be provided by the
24 Contracting Officer setting forth the provisions of this nondiscrimination clause.
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1 (b) The Subcontractor will, in all solicitations or advancements for
2 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
3 will receive consideration for employment without regard to race, color, religion, sex,
4 sexual orientation, gender identity, or national origin.

5 (c) The Subcontractor will not discharge or in any other manner
6 discriminate against any employee or applicant for employment because such employee
7 or applicant has inquired about, discussed, or disclosed the compensation of the
8 employee or applicant or another employee or applicant. This provision shall not apply to
9 instances in which an employee who has access to the compensation information of other
10 employees or applicants as a part of such employee's essential job functions discloses
11 the compensation of such other employees or applicants to individuals who do not
12 otherwise have access to such information, unless such disclosure is in response to a
13 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
14 action, including an investigation conducted by the employer, or is consistent with the
15 contractor's legal duty to furnish information.
16

17 (d) The Subcontractor will send to each labor union or representative
18 of workers with which he has a collective bargaining agreement or other contract or
19 understanding, a notice, to be provided by the agency Contracting Officer, advising the
20 labor union or workers' representative of the Subcontractor's commitments under section
21 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
22 notice in conspicuous places available to employees and applicants for employment.
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1 (e) The Subcontractor will comply with all provisions of Executive
2 Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of
3 the Secretary of Labor.

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title III of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0706 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

ROSEMONT COPPER COMPANY

Attest: _____

By: _____

Title: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____,
in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory
thereof or supplementary thereto, including but not limited to the Boulder Canyon Project
Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of
August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12,
1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September
30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat.
3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws,"
among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States"
or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL
ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the
"Contractor," a water conservation district organized under the laws of Arizona, with its
principal place of business in Phoenix, Arizona, and the SALT RIVER PROJECT
hereinafter referred to as the "Subcontractor," with its principal place of business in
Tempe, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
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1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.

22 (a) Where the Contracting Officer determines the Subcontractor is
23 physically able to receive Colorado River mainstream water through the Project Works in
24 exchange for or in replacement of existing supplies of water from surface sources other
25 than the Colorado River, the Contracting Officer may require that the Subcontractor accept
26

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.

6
7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.

13
14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 2,160 acre-feet of CAP NIA Priority Water for M&I uses including but not
17 limited to underground storage.

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

22
23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 2,160 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
26

1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the Salt
4 River Project Agricultural Improvement and Power District, c/o Corporate Secretary, P.O.
5 Box 52025, Phoenix, Arizona 85072-2205, with a copy to, General Manager and CEO,
6 Salt River Project Agricultural Improvement and Power District, P.O. Box 52025, Phoenix,
7 Arizona 85072-2205, on behalf of the United States or Contractor. The designation of the
8 addressee or the address may be changed by notice given in the same manner as
9 provided in this Article for other notices.
10

11 6.4 Change in Operating Agency. If at any time during the term of this
12 Subcontract the Contractor and the Operating Agency are not the same entity, the
13 Contractor agrees to coordinate and cooperate with the Operating Agency on any
14 obligations of the Contractor under this Subcontract that pertain to the operation of the
15 Central Arizona Project and delivery of Project Water hereunder.
16

17 6.5 Rules, Regulations, and Determinations.

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

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

10 6.6 Officials Not to Benefit.

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

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

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

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

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

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

13 6.10 Equal Employment Opportunity.
14

15 During the performance of this subcontract, the Subcontractor agrees as
16 follows:

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

1 available to employees and applicants for employment, notices to be provided by the
2 Contracting Officer setting forth the provisions of this nondiscrimination clause.

3 (b) The Subcontractor will, in all solicitations or advancements for
4 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
5 will receive consideration for employment without regard to race, color, religion, sex,
6 sexual orientation, gender identity, or national origin.

7
8 (c) The Subcontractor will not discharge or in any other manner
9 discriminate against any employee or applicant for employment because such employee
10 or applicant has inquired about, discussed, or disclosed the compensation of the
11 employee or applicant or another employee or applicant. This provision shall not apply to
12 instances in which an employee who has access to the compensation information of other
13 employees or applicants as a part of such employee's essential job functions discloses
14 the compensation of such other employees or applicants to individuals who do not
15 otherwise have access to such information, unless such disclosure is in response to a
16 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
17 action, including an investigation conducted by the employer, or is consistent with the
18 contractor's legal duty to furnish information.

19
20 (d) The Subcontractor will send to each labor union or representative
21 of workers with which he has a collective bargaining agreement or other contract or
22 understanding, a notice, to be provided by the agency Contracting Officer, advising the
23 labor union or workers' representative of the Subcontractor's commitments under section
24 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
25 notice in conspicuous places available to employees and applicants for employment.
26

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

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0707 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

**SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT**

Attest: _____

Title: _____

By: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE RESOLUTION COPPER MINING, LLC
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the RESOLUTION COPPER MINING, LLC, hereinafter referred to as the "Subcontractor," with its principal place of business in Superior, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.

22 (a) Where the Contracting Officer determines the Subcontractor is
23 physically able to receive Colorado River mainstream water through the Project Works in
24 exchange for or in replacement of existing supplies of water from surface sources other
25 than the Colorado River, the Contracting Officer may require that the Subcontractor accept
26

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.

6
7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.

13
14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 2,238 acre-feet of CAP NIA Priority Water for M&I uses including but not
17 limited to underground storage.

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

22
23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 2,238 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
26

1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the
4 Managing Director, Resolution Copper Mining, LLC, 102 Magma Heights, Superior,
5 Arizona 85173 with a copy to the Legal Department, Resolution Copper Mining, LLC, One
6 Gateway, 426 North 44th Street, Suite 320, Phoenix, Arizona 85008, on behalf of the
7 United States or Contractor. The designation of the addressee or the address may be
8 changed by notice given in the same manner as provided in this Article for other notices.
9

10 6.4 Change in Operating Agency. If at any time during the term of this
11 Subcontract the Contractor and the Operating Agency are not the same entity, the
12 Contractor agrees to coordinate and cooperate with the Operating Agency on any
13 obligations of the Contractor under this Subcontract that pertain to the operation of the
14 Central Arizona Project and delivery of Project Water hereunder.
15

16 6.5 Rules, Regulations, and Determinations.

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

25 (b) Where the terms of this subcontract provide for action to be
26 based upon the opinion or determination of any party to this subcontract, whether or not

1 stated to be conclusive, said terms shall not be construed as permitting such action to be
2 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
3 event that the Contractor or Subcontractor questions any factual determination made by
4 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
5 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
6 parties.
7

8 6.6 Officials Not to Benefit.

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

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

17 6.7 Assignment Limited--Successors and Assigns Obligated. The
18 provisions of this subcontract shall apply to and bind the successors and assigns of the
19 parties hereto, but no assignment or transfer of this subcontract or any part or interest
20 therein shall be valid until approved by the Contracting Officer.
21

22 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
23 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
24 court of the United States or the State of Arizona which would otherwise be available to
25 such parties even though provisions herein may declare that determinations or decisions
26

1 of the Secretary or other persons are conclusive or (b) as depriving any party of any
2 defense thereto which would otherwise be available.

3 6.9 Books, Records, and Reports. The Subcontractor shall establish and
4 maintain accounts and other books and records pertaining to its financial transactions,
5 land use and crop census, water supply, water use, changes of Project works, and to other
6 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
7 Contracting Officer in such form and on such date or dates as he may require. Subject to
8 applicable Federal laws and regulations, each party shall have the right during office hours
9 to examine and make copies of each other's books and records relating to matters covered
10 by this subcontract.
11

12 6.10 Equal Employment Opportunity.

13 During the performance of this subcontract, the Subcontractor agrees as
14 follows:
15

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

3 (b) The Subcontractor will, in all solicitations or advancements for
4 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
5 will receive consideration for employment without regard to race, color, religion, sex,
6 sexual orientation, gender identity, or national origin.

7
8 (c) The Subcontractor will not discharge or in any other manner
9 discriminate against any employee or applicant for employment because such employee
10 or applicant has inquired about, discussed, or disclosed the compensation of the
11 employee or applicant or another employee or applicant. This provision shall not apply to
12 instances in which an employee who has access to the compensation information of other
13 employees or applicants as a part of such employee's essential job functions discloses
14 the compensation of such other employees or applicants to individuals who do not
15 otherwise have access to such information, unless such disclosure is in response to a
16 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
17 action, including an investigation conducted by the employer, or is consistent with the
18 contractor's legal duty to furnish information.

19
20 (d) The Subcontractor will send to each labor union or representative
21 of workers with which he has a collective bargaining agreement or other contract or
22 understanding, a notice, to be provided by the agency Contracting Officer, advising the
23 labor union or workers' representative of the Subcontractor's commitments under section
24 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
25 notice in conspicuous places available to employees and applicants for employment.
26

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

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title III of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No. 21-XX-30-W0708 the day and year first above-written.
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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

RESOLUTION COPPER MINING, LLC

Attest: _____

By: _____

Title: _____

Title: _____

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**SUBCONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE FREEPORT-MCMORAN – SIERRITA, INC.
PROVIDING FOR WATER SERVICE**

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this ____ day of _____, 20____,
in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory
thereof or supplementary thereto, including but not limited to the Boulder Canyon Project
Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of
August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12,
1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September
30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat.
3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws,"
among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States"
or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL
ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the
"Contractor," a water conservation district organized under the laws of Arizona, with its
principal place of business in Phoenix, Arizona, and the FREEPORT-MCMORAN –
SIERRITA, INC. hereinafter referred to as the "Subcontractor," with its principal place of
business in Phoenix, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

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

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

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

WHEREAS, as of the date of execution of this Subcontract, and pursuant to the provisions of the Contract between the United States of America and the Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities dated August 5, 1987, Contract No. 7-07-30-W0167, as amended ("O&M Transfer Agreement"), CAWCD is the Operating Agency.

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

7 **WHEREAS**, section 104(a)(2) of the AWSA authorizes the reallocation of up
8 to 96,295 acre-feet of CAP NIA Priority Water to the Arizona Department of Water
9 Resources (“ADWR”) for further allocation;

10 **WHEREAS**, on January 16, 2014, the ADWR recommended to the
11 Secretary of the Interior the reallocation of 46,629 acre-feet of CAP NIA Priority Water for
12 municipal and industrial uses.

13 **WHEREAS**, On January 15, 2021, the Department of the Interior issued
14 notice in the Federal Register of its final decision to reallocate 46,629 acre-feet of CAP
15 NIA Priority Water consistent with ADWR’s recommendation. 86 Fed. Reg. 4119 (Jan.
16 15, 2021).

17 **WHEREAS**, the Subcontractor is in need of a water supply and desires to
18 subcontract with the United States and the Contractor for water service from CAP NIA
19 Priority Water supplies available under the Central Arizona Project; and

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

22 **NOW THEREFORE**, in consideration of the mutual and dependent
23 covenants herein contained, it is agreed as follows:
24
25
26

1 **3. DEFINITIONS:**

2 Definitions included in the Repayment Contract and the Stipulation are
3 applicable to this subcontract. The first letters of terms so defined are capitalized herein.
4 In addition, the following definitions shall apply to this subcontract

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

9 (b) "CAP Indian Priority Water" shall mean that water within the Available
10 CAP Supply having an Indian delivery priority.

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

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

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

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

22 **4. DELIVERY OF WATER:**

23 4.1 Obligations of the United States. Subject to the terms, conditions,
24 and provisions set forth herein and in the Repayment Contract, during such periods as it
25 operates and maintains the Project Works, the United States shall deliver Project Water
26 for M&I use by the Subcontractor. The United States shall use all reasonable diligence to

1 make available to the Subcontractor the quantity of Project Water specified in the schedule
2 submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to
3 the Operating Agency, the United States shall make deliveries of Project Water to the
4 Operating Agency which shall make subsequent delivery to the Subcontractor as provided
5 herein.

6 4.2 Term of Subcontract. This subcontract shall become effective upon
7 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; and (ii) the
8 date on which the Subcontractor has paid or provided for payment of past CAP NIA Priority
9 water service capital charges and 9(d) debt charges as required by the Contractor. This
10 subcontract shall be for permanent service as that term is used in Section 5 of the Boulder
11 Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the
12 terms of this subcontract for a period of 100 years beginning January 1 of the Year
13 following that in which the subcontract becomes effective; provided, that this subcontract
14 may be renewed upon written request by the Subcontractor upon terms and conditions of
15 renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract;
16 and provided, further, that such terms and conditions shall be consistent with Article 9.9
17 of the Repayment Contract.

18 4.3 Conditions Relating to Delivery and Use. Delivery and use of water
19 under this subcontract is conditioned on the following, and the Subcontractor hereby
20 agrees that:

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

24 (b) The system or systems through which water for Agricultural,
25 M&I (including underground storage), and Miscellaneous purposes is conveyed after
26 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or

1 other conduits provided and maintained with linings adequate in the Contracting Officer's
2 judgment to prevent excessive conveyance losses.

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

17 (d) The Subcontractor shall not sell, lease, exchange, forbear or
18 otherwise transfer Project Water; provided, however, that this does not prohibit exchanges
19 of Project Water within the State of Arizona covered by separate agreements approved by
20 the Contracting Officer and Contractor; and provided, further, that this does not prohibit
21 effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that
22 this does not prohibit the resale or exchange of Project Water within the State of Arizona
23 pursuant to Subarticle 4.3(e).

24 (e) (i) Project Water scheduled for delivery in any Year under
25 this subcontract may be used by the Subcontractor or resold, or exchanged by the
26 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer

1 and the Contractor. If said water is resold or exchanged by the Subcontractor for an
2 amount in excess of that which the Subcontractor is obligated to pay under this
3 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the
4 Contractor for application against the Contractor's Repayment Obligation to the United
5 States; provided, however, that the Subcontractor shall be entitled to recover actual costs
6 of transportation, treatment, and distribution, including but not limited to capital costs and
7 OM&R costs.

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

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

20 (f) Notwithstanding any other provision of this subcontract,
21 Project Water shall not be delivered to the Subcontractor unless and until the
22 Subcontractor has obtained final environmental clearance from the United States for the
23 system or systems through which Project Water is to be conveyed after delivery to the
24 Subcontractor at project turnout(s). Such system(s) shall include all pipelines, canals,
25 distribution systems, treatment, storage, and other facilities through or in which Project
26 Water is conveyed, stored, or treated after delivery to the Subcontractor at the

1 Subcontractor's Project turnout(s). In each instance, final environmental clearance will be
2 based upon a review by the United States of the Subcontractor's plans for taking and using
3 Project Water and will be given or withheld by the United States in accordance with the
4 Final Environmental Assessment - Arizona Department of Water Resources
5 Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona
6 Project Water in Accordance with the Arizona Water Settlements Act of 2004 (November
7 8, 2019) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional
8 action(s) required on behalf of the Subcontractor in order to obtain final environmental
9 clearance from the United States will be identified to the Subcontractor by the United
10 States, and no Project Water shall be delivered to the Subcontractor unless and until the
11 Subcontractor has completed all such action(s) to the satisfaction of the United States.

12 4.4 Procedure for Ordering Water.

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

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

20 (ii) Upon receipt of the schedule, the Contractor shall
21 review it and, after consultation with the Subcontractor, and except as provided in
22 Subarticle 4.4(a)(iii), shall make only such modifications to the schedule as are necessary
23 to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent
24 with the delivery capability of the Project, considering, among other things, the availability
25 of water, the delivery schedules of all subcontractors and Section 11 of the System Use
26

1 Agreement; provided, that this provision shall not be construed to reduce annual deliveries
2 to the Subcontractor.

3 (iii) If the Contracting Officer determines, in consultation
4 with the Operating Agency, that the amount of Project Water that will be available for
5 delivery as CAP NIA Priority Water is insufficient to meet all the requests for delivery of
6 CAP NIA Priority Water for the following Year as set forth in Article 4.7, the Contractor
7 shall notify the Subcontractor of the quantity of CAP NIA Priority Water available to the
8 Subcontractor for that following Year. Within five (5) business days of such notice, the
9 Subcontractor shall submit an amended water delivery schedule to the Contractor
10 reflecting the amount of CAP NIA Priority Water requested by the Subcontractor for the
11 following Year up to the reduced quantity available. Upon receipt of the amended
12 schedule, the Contractor shall review it and, after consultation with the Subcontractor,
13 shall make only such modifications to the schedule as are necessary to ensure that the
14 amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery
15 capability of the Project, considering, among other things, the availability of water, the
16 delivery schedules of all subcontractors and Section 11 of the System Use Agreement;
17 provided, that this provision shall not be construed to reduce annual deliveries to the
18 Subcontractor, except as required by Article 4.7.

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

24 (b) The monthly water delivery schedules may be amended upon
25 the Subcontractor's written request to the Contractor. Proposed amendments shall be
26 submitted by the Subcontractor to the Contractor no later than 15 days before the desired

1 change is to become effective, and shall be subject to review and modification in like
2 manner as the schedule. The Contractor shall notify the Subcontractor of its action on the
3 Subcontractor's requested schedule modification within 10 days of the Contractor's receipt
4 of such request.

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

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

16 4.5 Points of Delivery--Measurement and Responsibility for Distribution
17 of Water.

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

23 (b) Unless the United States and the Subcontractor agree by
24 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and
25 expense, connection facilities required to take and convey the water from the turnouts to
26 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the

1 Contracting Officer, drawings showing the construction to be performed by the
2 Subcontractor within the Water Supply System right-of-way 6 months before starting said
3 construction. The facilities may be installed, operated, and maintained on the Water
4 Supply System right-of-way subject to such reasonable restrictions and regulations as to
5 type, location, method of installation, operation, and maintenance as may be prescribed
6 by the Contracting Officer in consultation with the Contractor.

7 (c) All water delivered from the Water Supply System shall be
8 measured with equipment furnished, installed, operated and maintained by the United
9 States or the Operating Agency. Upon the request of the Subcontractor or the Contractor,
10 the accuracy of such measurements shall be investigated by the Contracting Officer or the
11 Operating Agency, Contractor, and Subcontractor, and any errors which may be mutually
12 determined to have occurred therein shall be adjusted; provided, that in the event the
13 parties cannot agree on the required adjustment, the Contracting Officer's determination
14 shall be conclusive.

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

23 4.6 Temporary Reductions. In addition to the right of the United States
24 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce
25 the amount of water to be delivered, the United States or the Operating Agency may, after
26 consultation with the Contractor and Contracting Officer, temporarily discontinue or reduce

1 the quantity of water to be furnished to the Subcontractor as herein provided for the
2 purposes of investigation, inspection, maintenance, repair, or replacement of any of the
3 Project facilities or any part thereof necessary for the furnishing of water to the
4 Subcontractor, but so far as feasible the United States or the Operating Agency shall
5 coordinate any such discontinuance or reduction with the Subcontractor and shall give the
6 Subcontractor due notice in advance of such temporary discontinuance or reduction,
7 except in case of emergency, in which case no notice need be given. Neither the United
8 States, its officers, agents, and employees, nor the Operating Agency, its officers, agents,
9 and employees, shall be liable for damages when, for any reason whatsoever, any such
10 temporary discontinuance or reduction in delivery of water occurs. If any such
11 discontinuance or temporary reduction results in deliveries to the Subcontractor of less
12 water than what has been paid for in advance, the Contractor shall reconcile any such
13 advance payments as provided in Subarticle 5.1(c).
14

15 4.7 Priority in Case of Shortage. As soon as is practicable after
16 October 1, the Contracting Officer shall determine, in consultation with the Operating
17 Agency, the availability of CAP NIA Priority Water consistent with the Available CAP
18 Supply and delivery schedules submitted by CAP contractors and subcontractors. The
19 determination of such supply shall be consistent with the AWSA and Paragraph 4 of
20 Amendment 2 to the Repayment Contract dated November 30, 2007, as set forth in
21 Exhibit A.
22

23 (a) Any Available CAP Supply remaining after all requests for
24 delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied
25 shall become available for delivery as CAP NIA Priority Water.
26

1 (b) If the Available CAP Supply is insufficient to meet the requests
2 for delivery of CAP NIA Priority Water by CAP NIA Priority Contractors and CAP NIA
3 Priority Subcontractors, then the Secretary and the Operating Agency shall pro-rate the
4 CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such
5 entitlements on the basis of the quantity of CAP NIA Priority Water used by each such
6 CAP NIA Priority Contractor or CAP NIA Priority Subcontractor in the last Year in which
7 the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water,
8 consistent with the settlements authorized, ratified and confirmed in the AWSA.
9

10 (c) Any CAP NIA Priority Water remaining after the pro-rata
11 distribution set forth in Subarticle 4.7(b) will be made available to CAP NIA Priority Water
12 Contractors and Subcontractors pro-rata on the basis of the difference between the
13 volume of water requested for delivery and the volume of water distributed under
14 Subarticle 4.7(b).
15

16 (d) Nothing in this Article 4.7 shall be construed to allow or
17 authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such
18 contracts, CAP water in amounts greater than such contractor's entitlement.
19

20 4.8 Secretarial Control of Return Flow.

21 (a) The Secretary reserves the right to capture all Return Flow
22 flowing from the exterior boundaries of the Contractor's Service Area as a source of supply
23 and for distribution to and use of the Central Arizona Project to the fullest extent
24 practicable. The Secretary also reserves the right to capture for Project use Return Flow
25 which originates or results from water contracted for from the Central Arizona Project
26 within the boundaries of the Contractor's Service Area if, in his judgment, such Return

1 Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or
2 sell its Return Flow; provided, however, that such Return Flow may not be sold for use
3 outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not
4 prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor
5 shall, at least 60 days in advance of any proposed sale of such water, furnish the following
6 information in writing to the Contracting Officer and the Contractor:
7

8 (i) The name and address of the prospective buyer.

9 (ii) The location and proposed use of the Return Flow.

10 (iii) The price to be charged for the Return Flow.

11 (b) The price charged for the Return Flow may cover the cost
12 incurred by the Subcontractor for Project Water plus the cost required to make the Return
13 Flow usable. If the price received for the Return Flow is greater than the costs incurred
14 by the Subcontractor, as described above, the excess amount shall be forthwith returned
15 by the Subcontractor to the Contractor for application against the Contractor's Repayment
16 Obligation to the United States. Costs required to make Return Flow usable shall include
17 but not be limited to capital costs and OM&R costs including transportation, treatment, and
18 distribution, and the portion thereof that may be retained by the Subcontractor shall be
19 subject to the advance approval of the Contractor and the Contracting Officer.
20

21 (c) Any Return Flow captured by the United States and
22 determined by the Contracting Officer and the Contractor to be suitable and available for
23 use by the Subcontractor may be delivered by the United States or Operating Agency to
24 the Subcontractor as a part of the water supply for which the Subcontractor subcontracts
25
26

1 hereunder and such water shall be accounted and paid for pursuant to the provisions
2 hereof.

3 (d) All capture, recapture, use, reuse, and sale of Return Flow
4 under this article shall be in accord with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona Project.
6

7 4.9 Water and Air Pollution Control. The Subcontractor, in carrying out
8 this subcontract, shall comply with all applicable water and air pollution laws and
9 regulations of the United States and the State of Arizona and shall obtain all required
10 permits or licenses from the appropriate Federal, State, or local authorities.

11 4.10 Quality of Water. The operation and maintenance of Project facilities
12 shall be performed in such manner as is practicable to maintain the quality of water made
13 available through such facilities at the highest level reasonably attainable as determined
14 by the Contracting Officer. Neither the United States, the Contractor, nor the Operating
15 Agency warrants the quality of water and is under no obligation to construct or furnish
16 water treatment facilities to maintain or better the quality of water. The Subcontractor
17 waives its right to make a claim against the United States, the Operating Agency, and the
18 Contractor, because of changes in water quality caused by the commingling of Project
19 Water with other water.
20

21 4.11 Exchange Water.

22 (a) Where the Contracting Officer determines the Subcontractor is
23 physically able to receive Colorado River mainstream water through the Project Works in
24 exchange for or in replacement of existing supplies of water from surface sources other
25 than the Colorado River, the Contracting Officer may require that the Subcontractor accept
26

1 said mainstream water in exchange for or in replacement of said existing supplies pursuant
2 to the provisions of Section 304(d) of the Basin Project Act; provided, however, that a
3 subcontractor on the Project aqueduct shall not be required to enter into exchanges in
4 which existing supplies of water from surface sources are diverted for use by other
5 subcontractors downstream on the Project aqueduct.
6

7 (b) If, in the event of reductions to the Available CAP Supply, the
8 Subcontractor has yielded water from other surface water sources in exchange for
9 Colorado River mainstream water supplied by the Contractor or the Operating Agency,
10 the Subcontractor shall have first priority against other users supplied with Project Water
11 that have not yielded water from other surface water sources but only in quantities
12 adequate to replace the water so yielded.
13

14 4.12 Entitlement to CAP NIA Priority Water.

15 (a) The Subcontractor is entitled to delivery of an annual
16 maximum of 5,678 acre-feet of CAP NIA Priority Water for M&I uses including but not
17 limited to underground storage.

18 (b) The Subcontractor's entitlement to CAP NIA Priority Water
19 under this subcontract shall be separate from any other entitlement to Project Water
20 available to the Subcontractor. This Subcontract neither modifies nor supersedes the
21 Subcontractor's existing entitlements or subcontracts, if any.
22

23 4.13 Retention of Priority. In accordance with section 104(a)(3) of the
24 AWSA, all Project Water delivered for M&I use under this Subcontract shall remain CAP
25 NIA Priority Water.
26

1 **5. PAYMENTS:**

2 5.1 Water Service Charges for Payment of Operation, Maintenance, and
3 Replacement Costs.

4 (a) Prior to October 1 of each Year, the Contractor shall notify the
5 Subcontractor of the published OM&R rate per acre foot of water based on the estimated
6 OM&R costs and water deliveries for the following Year. All estimates of OM&R costs
7 shall be accompanied by data and computations relied on by the Contractor in determining
8 the amounts of the estimated OM&R costs and shall be subject to joint review by the
9 Subcontractor and the Contractor. Provided, however, if during the Year, in the opinion of
10 the Contractor the amount of any annual OM&R estimated costs is likely to be insufficient
11 to cover the above-mentioned costs during such period, the Contractor may, at the
12 Contractor's discretion, increase the annual estimate of the Subcontractor's OM&R costs
13 by written notice thereof to the Subcontractor, and the revised OM&R rate shall apply to
14 all remaining monthly invoices.
15

16 (b) Subject to the provisions of Article 5.4 hereof, the Subcontractor
17 shall pay in advance for its share of Project OM&R costs estimated to be incurred by the
18 United States or the Operating Agency. The Contractor will submit monthly invoices for
19 the monthly volumes of water scheduled by the Subcontractor, due in the month prior to
20 delivery. All invoices have net 30-day terms. The Contractor may, at the Contractor's
21 discretion, offer equalized or alternative payment schedules.
22

23 (c) By March 1 of each Year, the Contractor shall reconcile amounts
24 paid in the prior Year by the Subcontractor to the volume of water delivered and any
25 applicable provisions of Subarticle 4.3(e).
26

1 (d) By May 1 of each Year, the Contractor shall determine the actual
2 OM&R rate for the prior Year based on actual OM&R costs and water volumes and shall
3 calculate the difference between the actual OM&R rate and the published OM&R rate.
4 Based on the Subcontractor's actual deliveries and any applicable provisions of Subarticle
5 4.3(e), the Contractor shall issue an invoice or credit to the Subcontractor for any
6 difference.
7

8 5.2 M&I Water Service Charges.

9 (a) Subject to the provisions of Article 5.4 hereof and in addition
10 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance
11 of the delivery of CAP NIA Priority Water by the United States or the Operating Agency,
12 make payment to the Contractor in equal semiannual installments of an M&I Water service
13 capital charge based on a maximum entitlement of 5,678 acre-feet per year multiplied by
14 the rate established by the Contractor for that year.
15

16 (b) The M&I Water service capital charge may be adjusted
17 periodically by the Contractor as a result of repayment determinations provided for in the
18 Repayment Contract and Stipulation and to reflect all sources of revenue, but said charge
19 per acre-foot shall not be greater than the amount required to amortize Project capital
20 costs allocated to the M&I function and determined by the Contracting Officer to be a part
21 of the Contractor's Repayment Obligation. Such amortization shall include interest at
22 3.342 percent per annum. If any adjustment is made in the M&I Water service capital
23 charge, notice thereof shall be given by the Contractor to the United States and to the
24 Subcontractor on or before June 30 of the Year preceding the Year the adjusted charge
25 becomes effective. The M&I Water service capital charge payment for the initial Year shall
26

1 be advanced to the Contractor in equal semiannual installments on or before December 1
2 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent
3 Year, payments by the Subcontractor in accordance with the foregoing provisions shall be
4 made in equal semiannual installments on or before the December 1 preceding said
5 subsequent Year and the June 1 of said subsequent Year as may be specified by the
6 Contractor in written notices to the Subcontractor.
7

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

11 (d) All payments to be made to the Contractor or the United States
12 under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments
13 fall due from revenues legally available to the Subcontractor for such payment from the
14 sale of water to its water users and from any and all other sources which might be legally
15 available; Provided, That no portion of the general taxing authority of the Subcontractor,
16 nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of
17 this subcontract, nor shall such sources be liable for the payments, contributions, and
18 other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly
19 and lawfully allocated and budgeted for such purpose by the Subcontractor for the
20 applicable budget year; and Provided, further, That no portion of this agreement shall ever
21 be construed to create an obligation superior in lien to or on a parity with the
22 Subcontractor's revenue bonds now or hereafter issued. The Subcontractor shall levy and
23 impose such necessary water service charges and rates and use all the authority and
24 resources available to it to collect all such necessary water service charges and rates in
25
26

1 order that the Subcontractor may meet its obligations hereunder and make in full all
2 payments required under this subcontract on or before the date such payments become
3 due.

4 5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery
5 of water from Project facilities during any period in which the Subcontractor may be in
6 arrears in the payment of any charges due the Contractor. The Contractor may sell to
7 another entity any water determined to be available under the Subcontractor's entitlement
8 for which payment is in arrears; provided, however, that the Subcontractor may regain the
9 right to use any unsold portion of the water determined to be available under the original
10 entitlement upon payment of all delinquent charges plus any difference between the
11 subcontractual obligation and the price received in the sale of the water by the Contractor
12 and payment of charges for the current period.
13

14 5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or
15 refuses in any Year to accept delivery of the quantity of water available for delivery to and
16 scheduled for delivery by the Subcontractor pursuant to this subcontract, said failure or
17 refusal shall not relieve the Subcontractor of its obligation to make the payments required
18 in this subcontract under Article 5.1, except as provided in Article 4.3(e). The
19 Subcontractor's obligation to make the payments required under Article 5.2(a) shall apply
20 regardless of the quantity of water scheduled or available for delivery in any Year.
21

22 5.5 Charge for Late Payments. The Subcontractor shall pay a late
23 payment charge on installments or charges that are received after the due date. The late
24 payment charge percentage rate calculated by the Department of the Treasury and
25 published quarterly in the Federal Register shall be used; provided, that the late payment
26

1 charge percentage rate shall not be less than 0.5 percent per month. The late payment
2 charge percentage rate applied on an overdue payment shall remain in effect until
3 payment is received. The late payment rate for a 30-day period shall be determined on
4 the day immediately following the due date and shall be applied to the overdue payment
5 for any portion of the 30-day period of delinquency. In the case of partial late payments,
6 the amount received shall first be applied to the late charge on the overdue payment and
7 then to the overdue payment.
8

9 **6. GENERAL PROVISIONS:**

10 6.1 Repayment Contract and the Stipulation Controlling. Pursuant to the
11 Repayment Contract, the United States has agreed to construct and, in the absence of an
12 approved Operating Agency, to operate and maintain the works of the Central Arizona
13 Project and to deliver Project Water to the various subcontractors within the Project
14 Service Area; and the Contractor has obligated itself for the payment of various costs,
15 expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the
16 Repayment Contract and the Stipulation. The Subcontractor expressly approves and
17 agrees to all the terms presently set out in the Repayment Contract including Subarticle
18 8.8(b)(viii) thereof and the Stipulation, or as such terms may be hereafter amended, and
19 agrees to be bound by the actions to be taken and the determinations to be made under
20 that Repayment Contract and the Stipulation, except as otherwise provided herein.

21 6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent
22 exchanges with Indian entities that have received an allocation of Project Water and
23 receive all benefits from the exchange.

24 6.3 Notices. Any notice, demand or request authorized or required by
25 this subcontract shall be deemed to have been given when mailed, postage prepaid, or
26 delivered to the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation,

1 P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or
2 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,
3 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the Sandy
4 Fabritz, Freeport-McMoRan Land & Water Department, 333 North Central Avenue,
5 Phoenix, Arizona 85004, on behalf of the United States or Contractor. The designation of
6 the addressee or the address may be changed by notice given in the same manner as
7 provided in this Article for other notices.
8

9 6.4 Change in Operating Agency. If at any time during the term of this
10 Subcontract the Contractor and the Operating Agency are not the same entity, the
11 Contractor agrees to coordinate and cooperate with the Operating Agency on any
12 obligations of the Contractor under this Subcontract that pertain to the operation of the
13 Central Arizona Project and delivery of Project Water hereunder.
14

15 6.5 Rules, Regulations, and Determinations.

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

24 (b) Where the terms of this subcontract provide for action to be
25 based upon the opinion or determination of any party to this subcontract, whether or not
26 stated to be conclusive, said terms shall not be construed as permitting such action to be

1 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the
2 event that the Contractor or Subcontractor questions any factual determination made by
3 the Contracting Officer, the findings as to the facts shall be made by the Secretary only
4 after consultation with the Contractor or Subcontractor and shall be conclusive upon the
5 parties.

6
7 6.6 Officials Not to Benefit.

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

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

15
16 6.7 Assignment Limited--Successors and Assigns Obligated. The
17 provisions of this subcontract shall apply to and bind the successors and assigns of the
18 parties hereto, but no assignment or transfer of this subcontract or any part or interest
19 therein shall be valid until approved by the Contracting Officer.

20 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed
21 (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate
22 court of the United States or the State of Arizona which would otherwise be available to
23 such parties even though provisions herein may declare that determinations or decisions
24 of the Secretary or other persons are conclusive or (b) as depriving any party of any
25 defense thereto which would otherwise be available.
26

1 6.9 Books, Records, and Reports. The Subcontractor shall establish and
2 maintain accounts and other books and records pertaining to its financial transactions,
3 land use and crop census, water supply, water use, changes of Project works, and to other
4 matters as the Contracting Officer may require. Reports thereon shall be furnished to the
5 Contracting Officer in such form and on such date or dates as he may require. Subject to
6 applicable Federal laws and regulations, each party shall have the right during office hours
7 to examine and make copies of each other's books and records relating to matters covered
8 by this subcontract.
9

10 6.10 Equal Employment Opportunity.

11 During the performance of this subcontract, the Subcontractor agrees as
12 follows:
13

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

1 (b) The Subcontractor will, in all solicitations or advancements for
2 employees placed by or on behalf of the Subcontractor, state that all qualified applicants
3 will receive consideration for employment without regard to race, color, religion, sex,
4 sexual orientation, gender identity, or national origin.

5 (c) The Subcontractor will not discharge or in any other manner
6 discriminate against any employee or applicant for employment because such employee
7 or applicant has inquired about, discussed, or disclosed the compensation of the
8 employee or applicant or another employee or applicant. This provision shall not apply to
9 instances in which an employee who has access to the compensation information of other
10 employees or applicants as a part of such employee's essential job functions discloses
11 the compensation of such other employees or applicants to individuals who do not
12 otherwise have access to such information, unless such disclosure is in response to a
13 formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or
14 action, including an investigation conducted by the employer, or is consistent with the
15 contractor's legal duty to furnish information.
16

17 (d) The Subcontractor will send to each labor union or representative
18 of workers with which he has a collective bargaining agreement or other contract or
19 understanding, a notice, to be provided by the agency Contracting Officer, advising the
20 labor union or workers' representative of the Subcontractor's commitments under section
21 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the
22 notice in conspicuous places available to employees and applicants for employment.
23
24
25
26

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

4 (f) The Subcontractor will furnish all information and reports required
5 by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and
6 orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books,
7 records, and accounts by the Contracting Agency and the Secretary of Labor for purposes
8 of investigation to ascertain compliance with such rules, regulations, and orders.
9

10 (g) In the event of the Subcontractor's noncompliance with the
11 nondiscrimination clauses of this contract or with any of such rules, regulations, or orders,
12 this subcontract may be canceled, terminated or suspended in whole or in part and the
13 Subcontractor may be declared ineligible for further Government contracts in accordance
14 with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such
15 other sanctions may be imposed and remedies invoked as provided in Executive Order
16 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor,
17 or as otherwise provided by law.
18

19 (h) The Subcontractor will include the provisions of paragraphs (a)
20 through (h) in every subcontract or purchase order unless exempted by the rules,
21 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of
22 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding
23 upon each subcontractor or vendor. The Subcontractor will take such action with respect
24 to any subcontract or purchase order as may be directed by the Secretary of Labor as a
25 means of enforcing such provisions, including sanctions for noncompliance: Provided,
26

1 however, that in the event the Subcontractor becomes involved in, or is threatened with,
2 litigation with a subcontractor or vendor as a result of such direction, the Subcontractor
3 may request the United States to enter into such litigation to protect the interests of the
4 United States.

5
6 6.11 Compliance With Civil Rights Laws and Regulations

7 (a) The Subcontractor shall comply with Title VI of the Civil Rights
8 Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L.
9 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title III of the Americans with
11 Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other
12 applicable civil rights laws, and with the applicable implementing regulations and any
13 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
14

15 (b) These statutes prohibit any person in the United States from being
16 excluded from participation in, being denied the benefits of, or being otherwise subjected
17 to discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By
19 executing this subcontract, the Subcontractor agrees to immediately take any measures
20 necessary to implement this obligation, including permitting officials of the United States
21 to inspect premises, programs, and documents.
22

23 (c) The Subcontractor makes this agreement in consideration of and
24 for the purpose of obtaining any and all Federal grants, loans, contracts, property
25 discounts, or other Federal financial assistance extended after the date hereof to the
26 Subcontractor by the Bureau of Reclamation, including installment payments after such

1 date on account of arrangements for Federal financial assistance which were approved
2 before such date. The Subcontractor recognizes and agrees that such Federal assistance
3 will be extended in reliance on the representations and agreements made in this article
4 and that the United States reserves the right to seek judicial enforcement thereof.

5 (d) Complaints of discrimination against the Subcontractor shall be
6 investigated by the Contracting Officer's Office of Civil Rights.
7

8 6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek
9 a final decree of the proper court of the State of Arizona approving and confirming the
10 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the
11 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of
12 such decree and of all pertinent supporting records. This subcontract shall not be binding
13 on the United States, the Contractor, or the Subcontractor until such final decree has been
14 entered.
15

16 6.13 Contingent on Appropriation or Allotment of Funds. The expenditure
17 or advance of any money or the performance of any work by the United States hereunder
18 which may require appropriation of money by the Congress or the allotment of funds shall
19 be contingent upon such appropriation or allotment being made. The failure of the
20 Congress to appropriate funds or the absence of any allotment of funds shall not relieve
21 the Subcontractor from any obligation under this subcontract. No liability shall accrue to
22 the United States in case such funds are not appropriated or allotted.
23

24 IN WITNESS WHEREOF, the parties hereto have executed this subcontract
25 No.21-XX-30-W0709 the day and year first above-written.
26

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THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

Attest: _____
Alexandra M. Arboleda
Secretary

By: _____
Terry Goddard
President

**FREEPORT-MCMORAN – SIERRITA,
INC.**

Attest: _____

Title: _____

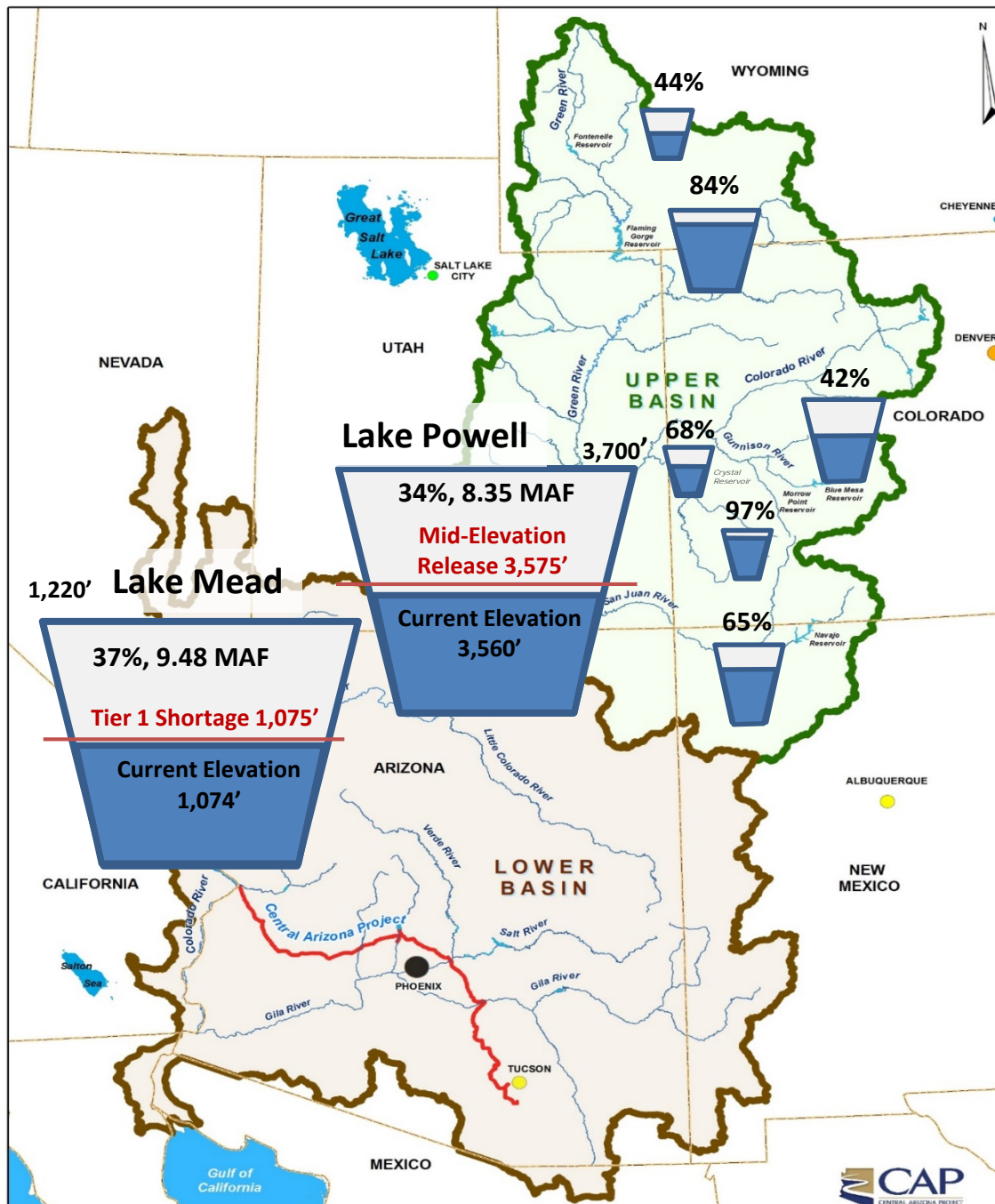
By: _____

Title: _____

Colorado River Water Supply Report

System Contents: 22.72 MAF

As of May 31, 2021

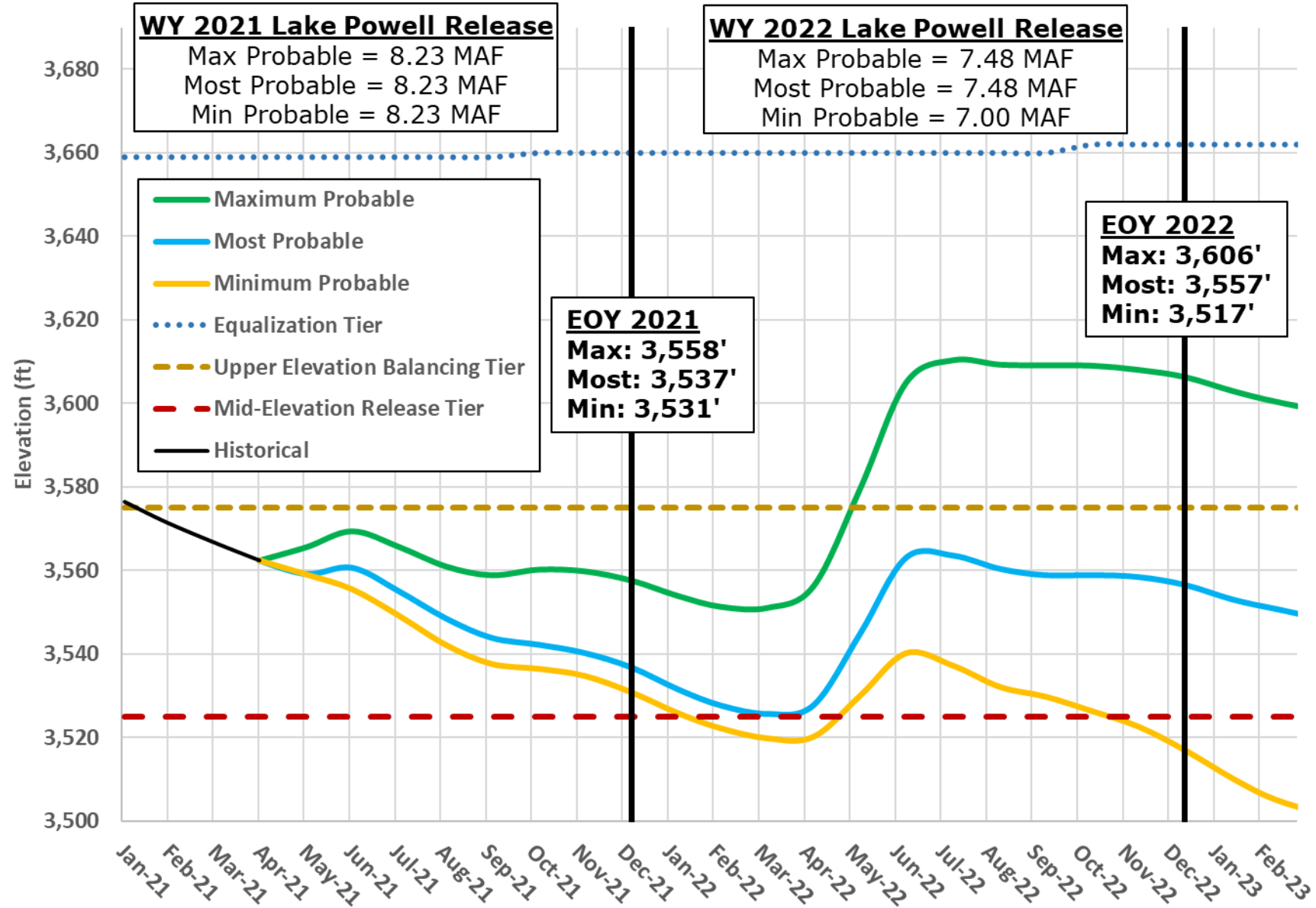


Reservoir Capacities (MAF)

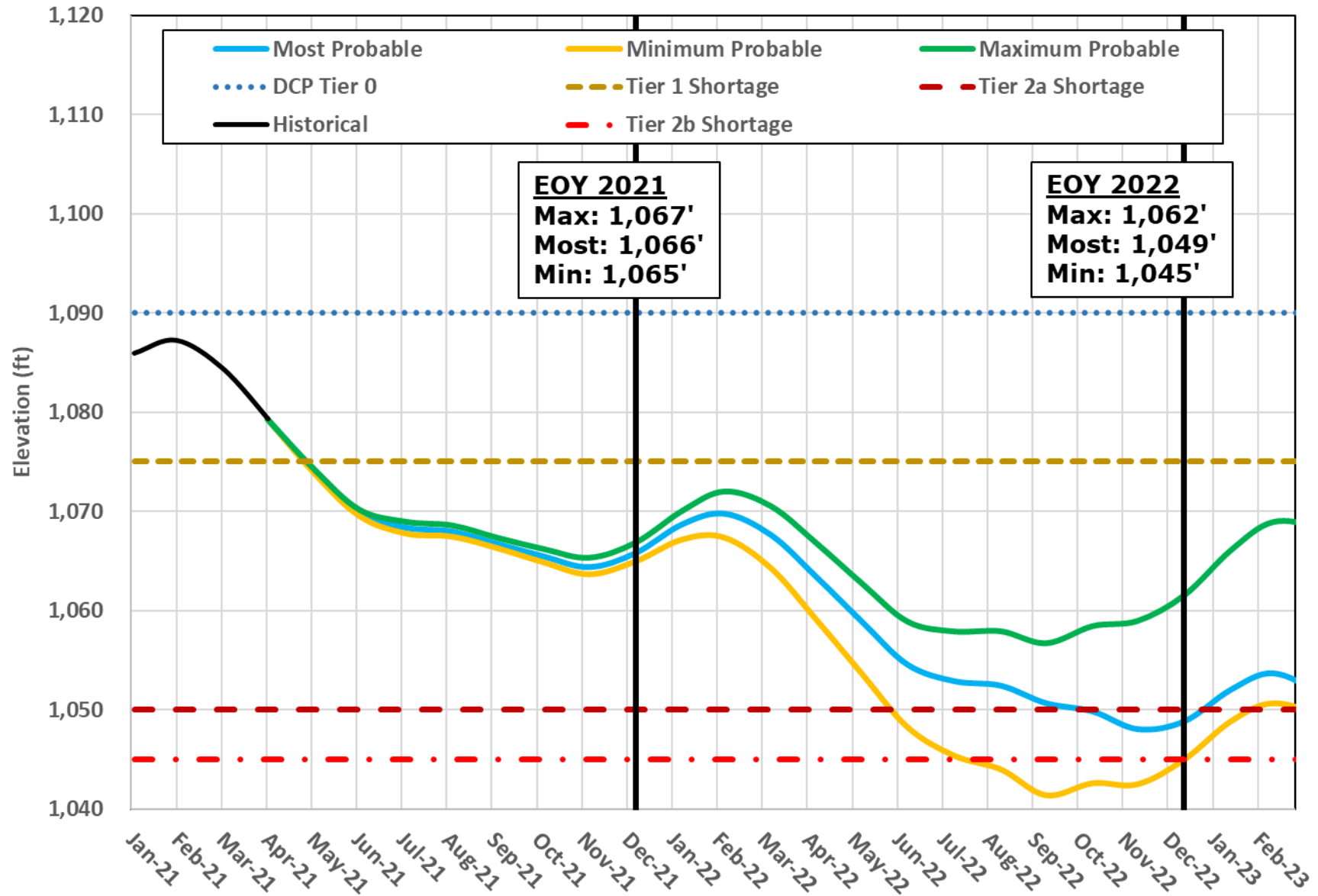
| Reservoir | Current | Change* | Maximum |
|-------------------------|---------|---------|---------|
| Lake Mead | 9.48 | - 0.57 | 25.90 |
| Lake Powell | 8.35 | - 0.21 | 24.30 |
| Flaming Gorge Reservoir | 3.15 | - 0.03 | 3.75 |
| Fontenelle Reservoir | 0.15 | + 0.03 | 0.34 |
| Navajo Reservoir | 1.10 | + 0.05 | 1.70 |
| Blue Mesa Reservoir | 0.35 | - 0.03 | 0.83 |
| Morrow Point Reservoir | 0.11 | + 0.01 | 0.12 |
| Crystal Reservoir | 0.02 | 0.00 | 0.03 |

* With respect to previous month's report

Lake Powell End of Month Elevations
(May 2021 24-Month Study)

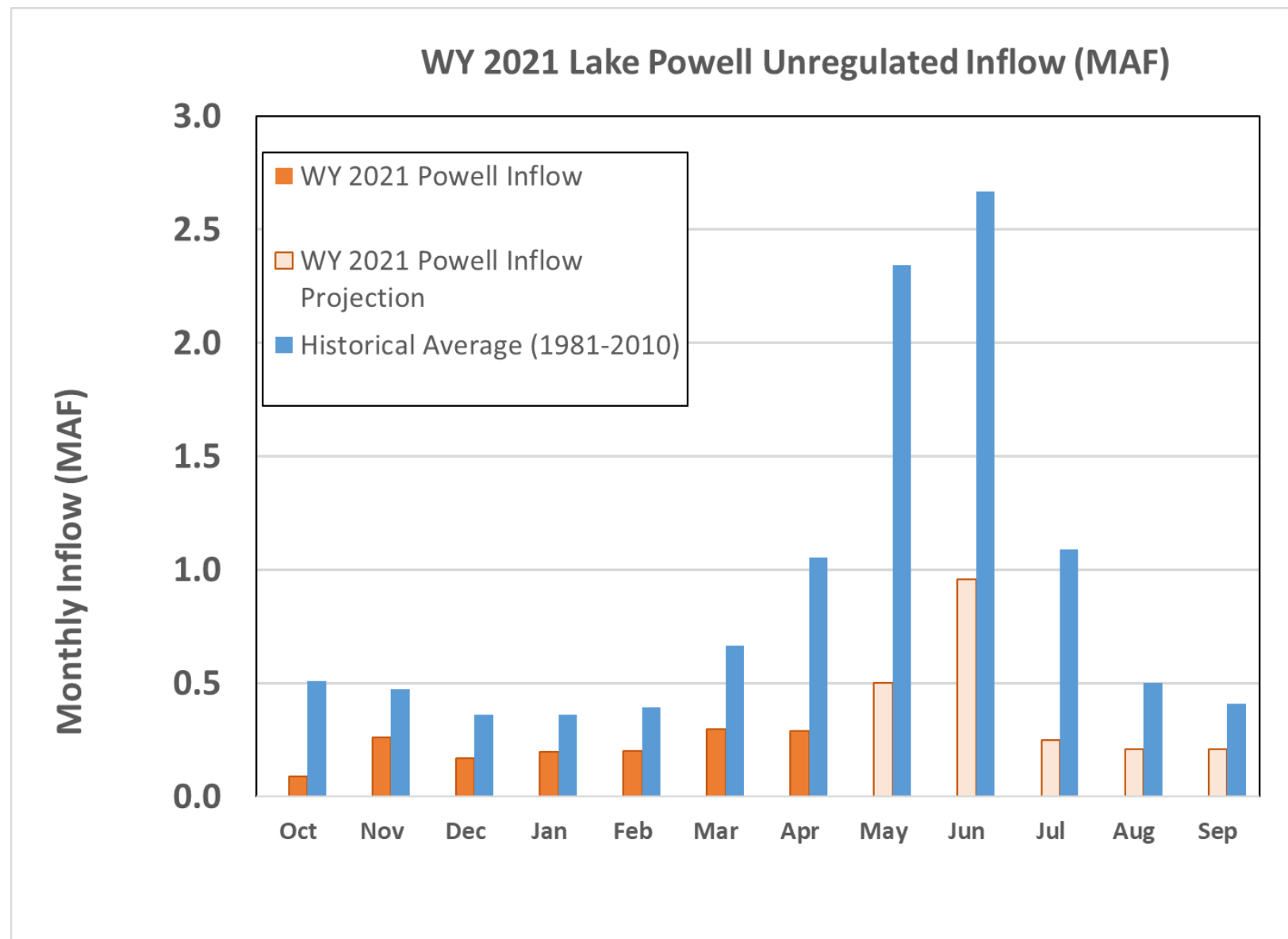


Lake Mead End of Month Elevations (May 2021 24-Month Study)



Powell Unregulated Inflow 2021

- WY 2021 projected to be 3rd lowest inflow
 - 3.36 MAF – WY 2021
- April – July inflow forecast projected to be 28% of 30-year average
- WY 2021 projected to be 33.6% of 30-year average



INFORMATION BRIEF

BOARD OF DIRECTORS



Agenda Number 11

CONTACT: Don Crandall Darrin Francom
623-869-2457 623-869-2276
dcrandall@cap-az.com dfrancom@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: Report on Water Operations (*Project Reliability*[^]) - Crandall

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

2022 CAWCD Board Strategic Plan

Water Supply: *Providing a reliable CAP water supply for the short- and long-term*

Project Reliability: *Providing reliable and cost-effective operations, maintenance, and replacement of CAP's infrastructure and technology assets*

PREVIOUS BOARD ACTION/ACTIVITY:

| | |
|-------------------|---|
| June 4, 2020 | Report on Water Operations |
| September 3, 2020 | Report on Water Operations |
| January 7, 2021 | Report on Water Operations and 2021 Annual Operating Plan |
| March 4, 2021 | Report on Water Operations |

ISSUE SUMMARY/DESCRIPTION:

Update regarding CAP's 2020 water diversions and an operations update on Colorado River diversions, deliveries, Lake Pleasant operations, and CAP recharge operations through April, 2021.

Reclamation has released the final CY 2020 Colorado River Accounting and Water Use Report which records consumptive use from the mainstream Colorado River in accordance with the Article V of Consolidated Decree. The final accounted Colorado River water available for consumptive use after all Arizona Lake Mead Contributions were deducted was 2,470,776 Acre-Feet inclusive of ICS released by CAWCD. Other Arizona Entitlement holder consumptive use was 1,068,239 Acre-Feet and the final CAP Colorado River diversion was 1,402,537 Acre-feet. The difference between Reclamation's provisional forecast of water available for CAP to divert on December 30th, 2020 and CAP's final diversion on December 31st, 2020 required a release of 4,606 Acre-feet of EC-ICS in accordance with CAWCD's request to avoid any potential over-run resulting in a net adjustment to the Arizona Basic Apportionment of 329,224 Acre-Feet.

Lake Mead contributions associated with the DCP implementation and related actions were 333,380 Acre-Feet. The final accounted Arizona Lower Basin Drought Contingency Plan (LBOD) contribution was 180,608 Acre-Feet which included 44,310 Acre-Feet of Ag Forbearance, 3,124 Acre-Feet of Compensated Conservation, and 133,174 Acre-Feet of CAWCD Excess Water. Differences in provisional accounting and final year end accounting resulted in a DCP Contribution Deficiency of 11,392 Acre-Feet for CY 2020 which will be added to CAWCD's CY 2021 DCP Contribution as required by the LBODs agreement. When formulating the LBODs agreement it was recognized that there is some operational uncertainty in the final year end forecasts once final accounting becomes available and only requires Reclamation to adjust scheduled

deliveries intra-year should a forecasted Contribution Deficiency exceed 25,000 Acre-Feet

For CY 2021, CAP's Colorado River diversions through April 30th, 2021 are 548,889 Acre-Feet and are back on plan. CAP water deliveries are 379,723 Acre-Feet and are slightly lower than planned, resulting in Lake Pleasant Elevation at 1,696.1 feet, slightly higher than planned. Lake Pleasant had releases in early April and May to accommodate planned maintenance activities and higher than expected CAP deliveries. For CY 2021, CAP's recharge projects are scheduled near capacity with the exception of Tonopah Desert Recharge Project (TDRP). CAP will evaluate alternate maintenance plans or potentially returning TDRP to reserve status following the release of Reclamations 24-month study in August which receipt of CAP customer water orders in October. CAP operations will continue to make operational adjustments to the annual operating plan as real time operational changes are required.

In early March CAP staff noted floc's of Cymbella in the forebay of the Bouse Hills and Little Harquahala Pumping Plants and notified downstream customers. Cymbella is a nuisance algae that attaches to the CAP liner and after breaking away migrates to system filters and equipment causing both increased hydraulic losses on the system as well as operational and maintenance nuisances to keep equipment cleared of the algae. CAP staff continues to partner with Arizona State University to better understand and develop mitigation strategies for these algae blooms.

Maintenance activities on major equipment affecting system capacity to date includes completion of the following activities:

- Mark Wilmer IPB Disconnect Switch Replacement and functional test completed in January
- Mark Wilmer Unit 5 Motor Pole Replacement - 14 refurbished motor rotor poles for unit 5 were received from the vendor in early April. All poles have been installed and re-assembly is in progress with an anticipated return to service expected on June 2nd, 2021 which should help with some additional shaping and capacity during the upcoming summer outage to the Left Plant (Unit 1, 2, and 3).
- Salt Gila Unit 1 Overhaul - Unit 1 overhaul at Salt Gila is nearing completion. Heat run is scheduled the week of May 23rd, 2021 and an anticipated return to service before May 31st, 2021 prior to south Aqueduct delivery capacities reaching peak summer flows.
- Waddell CO2 System Replacement -Commissioning of Units 2 and 3, has been completed and the Vortex Fire Suppression System is operational, and integrated with the Onyx System. The plan is to proceed with installation on Units 6 and 7 in the fall once the release season is completed.
- Hassayampa Pumping Plant Bus Tie 5 year PM – Completed and required a 1 day half plant outage in early March.
- Bouse Pumping Plant Exciter Replacements – Completed installation on Units 1, 2, 4, 5, and 6 with Units 3, and Unit 10 currently under construction. Remaining Units 7, 8, and 9 will be completed during the summer left plant outage (Units 6-10). Capacity was slightly limited in April because of this project resulting in a small release from Waddell.
- Santa Rosa Turnout Gate #5 was completed in April prior to the beginning of peak demand season for the Turnout.

The summer half plant outage will begin on June 14th, 2021 and complete on August 26th, 2021.

ATTACHMENTS:

1. Presentation



YOUR WATER. YOUR FUTURE.

Report on 2020 Water Deliveries and 2021 Water Operations

June 2021 CAP Board Meeting

DON CRANDALL – WATER CONTROL MANAGER

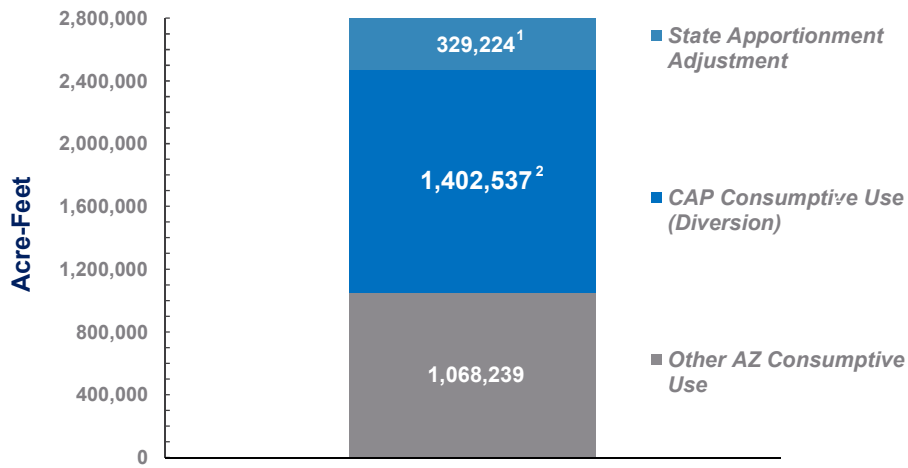
Report on Water Operations

- Report on 2020 Colorado River Diversion
 - 2020 Arizona Decree Accounting
 - Lake Mead Contributions
- Report on 2021 CAP Operations
 - Colorado River Diversions
 - Customer Deliveries
 - Lake Pleasant Elevations
 - Recharge Operations
 - Maintenance Activities
 - Biology – Cymbella (Rock Snot)
 - Outreach

2 | REPORT ON 2020 CO RIVER DIVERSION AND 2021 WATER OPERATIONS



2020 Arizona Decree Accounting Summary



Notes

1. Delivery of 4,606 AF ICS determined as the difference between amount of water diverted on Dec 31, 2020 and the water available to CAWCD per the provisional BOR Dec 30, 2020 forecast

2. Required DCP Tier 0 Contribution includes AG forbearance 3 program, MWID conservation, and CAP excess water and reflects the first full year of DCP implementation of Lake Mead contributions and related actions. DCP Contribution deficiency of 11,392 AF to be met during 2021 per Section E.III.4 of LBOps.

3 | REPORT ON 2020 CO RIVER DIVERSION AND 2021 WATER OPERATIONS



2020 Lake Mead Contributions

| Arizona Lake Mead Contribution Volumes DCP Implementation & Related Actions | | ICS ¹ | 2019 ² (ac-ft) | 2020 ³ Tier 0 (ac-ft) | 2021 ⁴ Tier 0 (ac-ft) |
|--|---------------------------------|------------------|------------------------------|--|--|
| Arizona LBDP (Tier 0: 192k ac-ft) | Ag Forbearance 3 Program | EC-ICS | 24,283 | 44,310 ⁵ | |
| | Ag Forbearance 3 Program | DCP-ICS | | | 57,000 |
| | CAWCD Compensated Conservation | EC-ICS | | 3,124 ^{5,6} | |
| | CAWCD Excess Water ⁷ | | 119,942 | 133,174 | 146,392 |
| | LBDP Total | | 144,225 | 180,608 | 203,392 |
| Additional CAWCD Conservation | CAWCD Compensated Conservation | EC-ICS | | | 3,500 |
| | CAWCD Total | | | | 206,892 |
| Arizona DCP Mitigation Offset (400k ac-ft total) | GRIC - Reclamation | EC-ICS | 100,000 | | |
| | GRIC - AWBA | EC-ICS | 17,000 | 33,000 | |
| | GRIC ⁸ | EC-ICS | | 50,000 | 40,000 |
| | CRIT System Conservation | EC-ICS | | 50,000 | 50,000 |
| | Total | | 117,000 | 133,000 | 90,000 |
| Reclamation DCP | FMYN System Conservation | | | 10,000 | 13,933 |
| | MVIDD | | | 6,137 | 6,925 |
| | Total | | 0 | 16,137 | 20,858 |
| Additional Arizona ICS Creation | CRIT | EC-ICS | 6,274 | 3,736 | 4,685 |
| | Total | | 6,274 | 3,736 | 4,685 |
| Pilot System Conservation Program (PSCP) | Bullhead City | | 306 | 349 | 360 |
| | CRIT | | 26,805 | | |
| | FMYN | | 13,683 | | |
| | Total | | 40,794 | 349 | 360 |
| Total Arizona Lake Mead Contributions | | | 308,293 | 333,830 | 322,795 |

<https://www.cap-az.com/documents/water-operations/Lake-Mead-Contribution-Summary-Table-2019-2021.pdf>

Notes:

¹ ICS Volumes reflect creation volumes contributed to Lake Mead and do not reflect account balances after losses and assessments.

² 2019 reflects proactive actions prior to DCP execution and full implementation in 2020.

³ 2020 reflects the first full year of DCP implementation of Lake Mead contributions and related actions.

⁴ Values reflect estimated volumes, subject to final accounting.

⁵ Actual Jan. 1 Lake Mead elevation was above 1,090'; therefore this ICS will remain as EC ICS (LBOps III.E.3).

⁶ 3,500 AF was conserved per the agreement between CAWCD and MDWID; per history of use provisions in ICS Exhibit R, 3,124 AF counts as ICS creation.

⁷ Volume will vary based on available Colorado River water, on-river use forecast, and CAP operations.

⁸ GRIC to fully utilize the Arizona ICS Accumulation Capacity in 2021, up to 45,000 ac-ft is in GRIC's ICS Creation Plan.

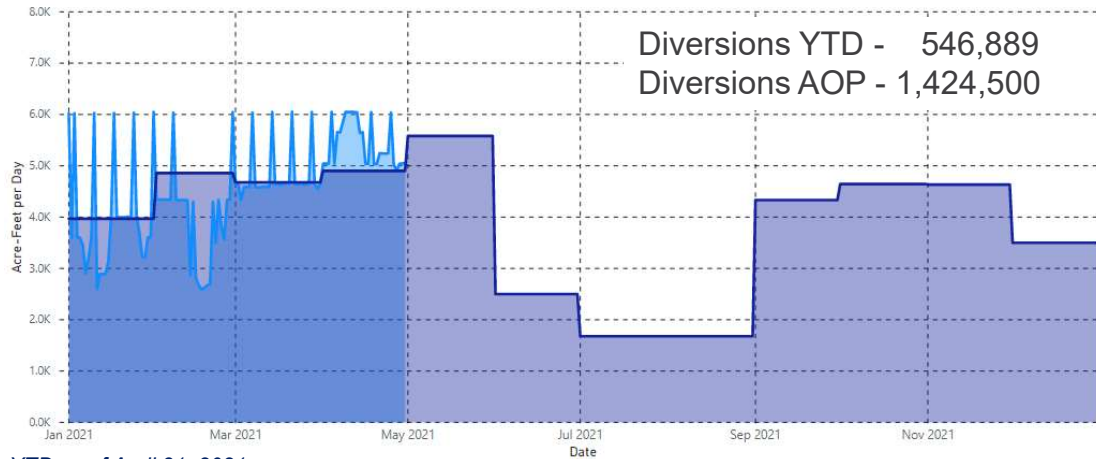
4 | REPORT ON 2020 CO RIVER DIVERSION AND 2021 WATER OPERATIONS



2021 CO River Diversions

Planned AOP Diversions Vs Actual

● Actual Diversion ● AOP Diversion



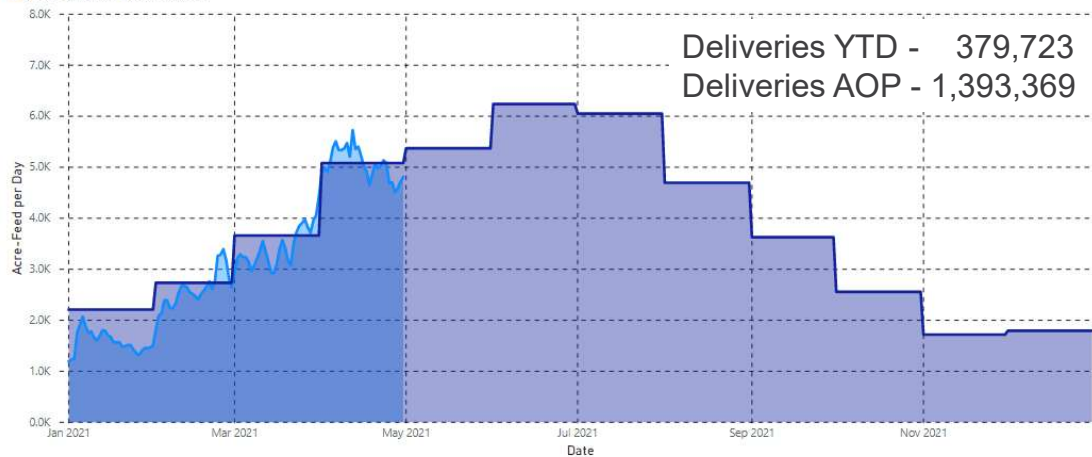
5 | REPORT ON 2020 CO RIVER DIVERSION AND 2021 WATER OPERATIONS



2021 CAP Deliveries

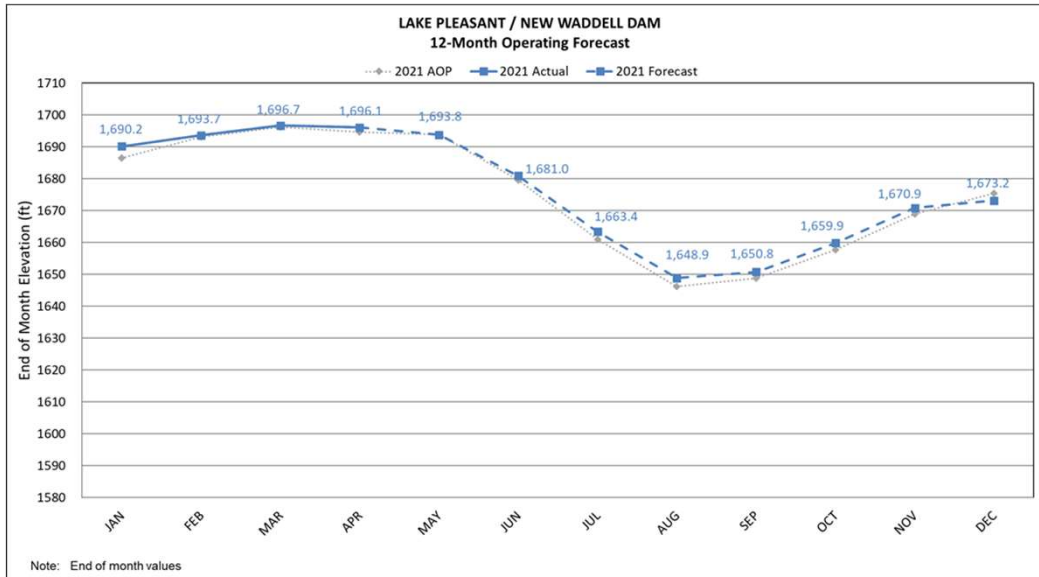
Planned AOP Deliveries Vs Actual

● Actual Deliveries ● AOP Deliveries



6 | REPORT ON 2020 CO RIVER DIVERSION AND 2021 WATER OPERATIONS

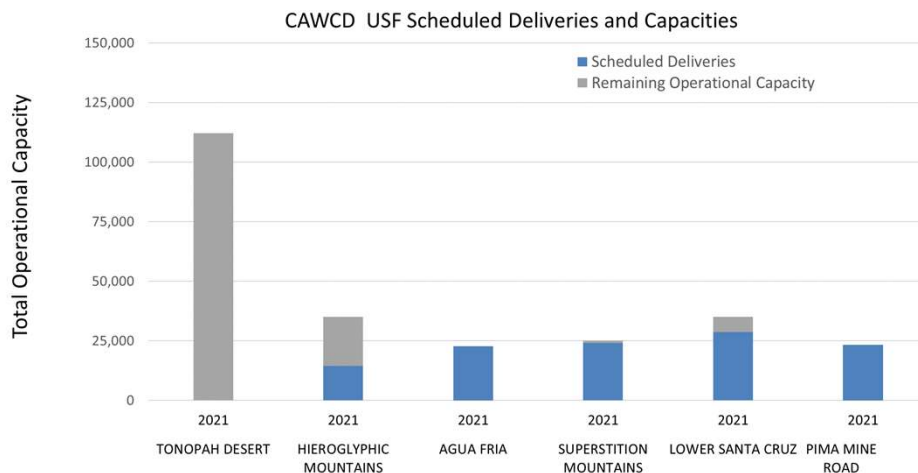




7 | REPORT ON 2020 CO RIVER DIVERSION AND 2021 WATER OPERATIONS



2021 Recharge Operations



8 | REPORT ON 2020 CO RIVER DIVERSION AND 2021 WATER OPERATIONS



System Biology - Cymbella (Rock Snot)

- Early signs of Cymbella with flocs in March
- Since 1997, blooms of Cymbella Diatoms Nuisance to CAP and Customers
- Large Amount of Cymbella in the system
- Partnership with ASU and AzCATI



9 | REPORT ON 2020 CO RIVER DIVERSION AND 2021 WATER OPERATIONS



Maintenance Activities

- Mark Wilmer IPB Disconnect Switch replaced
- MWP Unit 5 Poles replaced estimated return to service early June
- SGL Unit 1 overhaul complete return to service end of May
- WAD Units 2 & 3 CO₂ Replacement Complete
- BSH Pumping Plant Exciter Replacements in Progress
- HSY Bus Tie 5 year PM
- Santa Rosa Turnout Gate 5 Replacement Completed
- Summer outage Jun 14th, 2021 – Aug 26th 2021.



MWP Unit 5 Pole Replacement

10 | REPORT ON 2020 CO RIVER DIVERSION AND 2021 WATER OPERATIONS



Maintenance Activities



Salt Gila Unit 1 Overhaul



BSH Exciter Replacement



Santa Rosa Turnout Gate Replacement

11 | REPORT ON 2020 CO RIVER DIVERSION AND 2021 WATER OPERATIONS



Outreach

- Ag Curtailment Planning
- Fall Outage Letter
- Water Operations\Quality outreach to M&I Customers
- Presentation on CAP Finance and Operations Webinar to the Brazil National Water Agency (ANA) – PISF Sao Francisco Basin Project
- Walsh University Honors Program Presentation

12 | REPORT ON 2020 CO RIVER DIVERSION AND 2021 WATER OPERATIONS



INFORMATION BRIEF

BOARD OF DIRECTORS



Agenda Number 12

CONTACT: Deanna Ikeya Chuck Cullom
623-869-2498 623-869-2665
dikeya@cap-az.com ccullom@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: Report on System Conservation in 2020 and 2021 (*Water Supply*[^]) - Ikeya

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

2022 CAWCD Board Strategic Plan

Water Supply: *Providing a reliable CAP water supply for the short- and long-term*

Stewardship and Sustainability: *Serving as proactive leaders in sustainability and responsible, collaborative stewards of CAP's Colorado River supply*

PREVIOUS BOARD ACTION/ACTIVITY:

| | |
|-------------------|--|
| May 2, 2019 | Report on CAP Intentionally Created Surplus presented to Board |
| November 7, 2019 | Report on 2019 and Projected 2020 ICS and System Conservation Activities |
| March 5, 2020 | Update on Intentionally Created Surplus (ICS) |
| September 3, 2020 | Report on 2020-2021 ICS Creation Efforts |
| January 7, 2021 | Report on ICS Creation and System Conservation for 2020 and 2021 |

ISSUE SUMMARY/DESCRIPTION:

The Colorado River annual accounting of Lower Basin and Mexico consumptive uses for 2020 was released by the Bureau of Reclamation (Reclamation) on May 14, 2021. The report, 2020 Lower Basin Water Accounting Report (Accounting Report), includes quantification of consumptive uses for each Colorado River contractor in the Lower Basin, system conservation, Drought Contingency Plan (DCP) contributions, and Intentionally Created Surplus (ICS) creation, deliveries and account status.

The recent trend in water use in the Lower Colorado River Basin shows significant decreases which coincide with conservation programs initiated around 2016 to address the rapidly decreasing elevations in Lake Mead prior to this. The average consumptive use for the Lower Basin and Mexico combined for 2014-2020 has been 8.57 MAF, which includes the higher use years of 2014 and 2015 and is still well below the combined 9.0 MAF apportionment. The Accounting Report shows the consumptive use for Arizona, California, and Nevada at 6.79 MAF and the Lower Basin states together with the deliveries to Mexico were 8.22 MAF in 2020. This includes a release of ICS credits for CAWCD of 4,606 AF.

Each year, CAWCD operations attempts to balance canal operations including canal capacity to meet diversion schedules, power availability and supply available to CAP to maximize the CAWCD diversion to fully use the available Colorado River supply. Annually, CAWCD coordinates closely with Reclamation as Reclamation forecasts the Colorado River supply available to CAWCD. During November and December, Reclamation and CAWCD operations meet frequently to assess the estimated available Colorado River supply for CAWCD. The actual final amount available to CAWCD is determined after the year ends and is released

in the annual Accounting Report in May.

In our efforts to maximize 2020's diversion and relying on Reclamations available forecast, CAWCD's diversion was in excess of the final available supply that was determined in May 2021, when the other Arizona on-river uses were accounted. This resulted in the decision to release CAWCD ICS credits in order to avoid an overrun. Reclamation's late year forecasts under projected actual Lower Basin and Mexico consumptive use in 2020.

In 2020, CAWCD made Arizona's DCP contribution, consistent with the LBDP and the bilateral agreement between Reclamation and CAWCD. In addition, others in Arizona made significant contributions to Lake Mead as part of the Arizona's DCP Implementation Plan offset component for system conservation, and ICS creation. 2020 was the first year under Tier 0 per the DCP Agreements and Arizona was required to provide a DCP Contribution of 192 KAF. Although CAWCD coordinates closely with Reclamation regarding Reclamation's forecast of the available supply for the CAWCD diversion, Reclamation, in its final accounting in May 2021, determined that CAWCD's 2020 diversion was 11,392 AF deficient in meeting the 192 KAF DCP Contribution. There are provisions in the DCP Agreements (Exhibit 1 to the Lower Basin Drought Contingency Plan Agreement Section III.D.2) which recognize the potential difficulties in implementing such agreements in real-time. These provisions allow for minor deficiencies in DCP Contributions (within 25 KAF) to be made up in the following year (Section III.E.4) and CAWCD is working to make the Tier 1 DCP Lake Mead contribution of 192 KAF plus the 2020 deficiency amount in 2021.

Since 2019, Arizona's combined conservation, ICS creation and Lake Mead contributions have averaged more than 300,000 AF per year. For example, although DCP Contributions were not required in 2019, total conservation and ICS efforts from Arizona water users totaled more than 300 KAF. In 2020, in addition to DCP Contributions, significant volumes were conserved and contributed by Arizona water users, totaling over 330 KAF. CAWCD and other Arizona water users are continuing their conservation and contribution activities in 2021 with over 300 KAF of Lake Mead contributions projected.

The ICS program continues to be an effective tool that has encouraged conservation in Lake Mead since its inception in the 2007 Guidelines. Further updates were made to the ICS program in the DCP Agreements to provide additional incentives under the current hydrologic conditions. ICS creation began immediately under the 2007 Guidelines with the Southern Nevada Water Authority (SNWA) steadily increasing its accumulation over time and the Metropolitan Water District of Southern California (MWD) utilizing the flexibility of the program in the creation and delivery of ICS. The combination of ICS creation and system conservation has contributed to Lake Mead elevations staying above the first Shortage Tier. Reclamation projects that without the ICS and system conservation, Lake Mead would have entered into Tier 1 shortage as early as 2016.

Based on the Accounting Report, at the end of 2020, a total of 2.84 MAF of ICS credits had been accumulated in the Lower Basin and 203,369 AF in Mexico's water reserve. ICS accumulation limits for each state were established under the 2007 Guidelines and they were increased under the DCP. Arizona and Nevada are projected to near or exceed their accumulation limits by the end of 2021. Currently options to expand the accumulation limits are being considered. Arizona is approaching its shared-capacity limit of 600 KAF. This goal has been accomplished through coordination and collaboration between Arizona's Federal and non-Federal parties.

In 2020, CAWCD accumulated 9,091 AF of additional Binational ICS. In addition, as noted earlier, CAWCD released 4,606 AF of Extraordinary Conservation ICS (EC ICS). Per the Accounting Report, at the end of 2020, CAWCD holds 409,733 AF of ICS. This includes 103,050 AF of System Efficiency ICS, 273,842 of EC ICS, and 32,841 AF of BICS. Current projections show CAWCD continues to hold sufficient ICS to meet

mitigation commitments under the Arizona DCP Implementation Plan.

ATTACHMENTS:

1. Presentation



Water Accounting and System Conservation 2020 and 2021

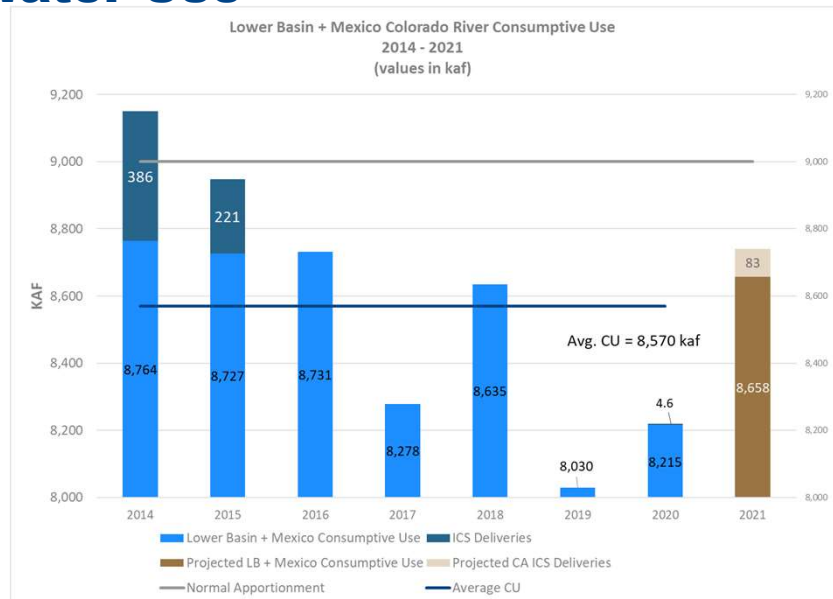
Deanna Ikeya
Colorado River Programs

CAWCD Board Meeting
June 10, 2021

YOUR WATER. YOUR FUTURE.

Lower Basin Water Use

- 2020 reflects the implementation of DCP and related programs
- Consumptive use for Lower Basin states = 6.79 MAF
- CAWCD took 4.6 kaf of ICS deliveries
- 2021 reflects continued DCP operation and projected increased water use in California
- Including ICS deliveries, LB average consumptive uses for 2014-2020 are 8,570 kaf, 430 kaf below Normal apportionment



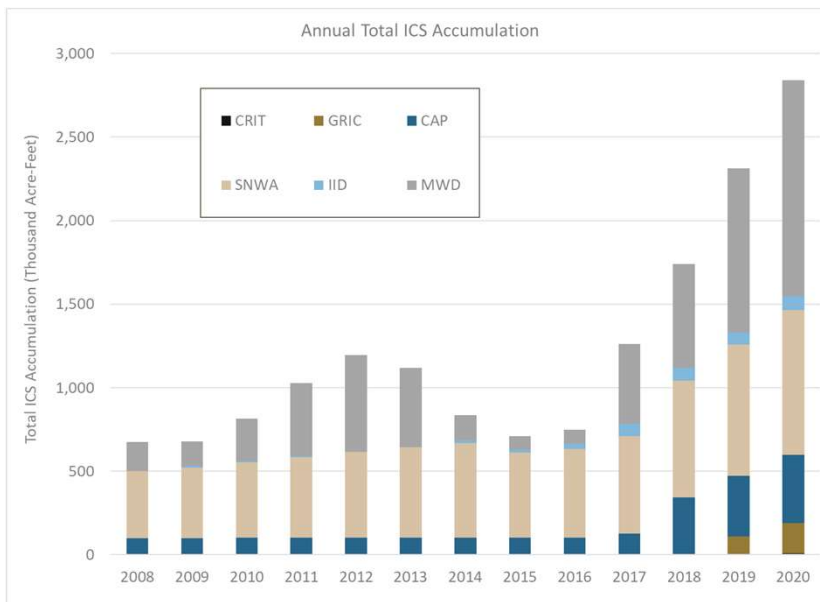
Arizona Contributions

- Arizona 2020 DCP Contribution was 11,392 af short of the 192 kaf requirement
- Real-time operations taking into account higher priority water uses are involved and require reliable data
- Within the flexible constraints and expectations of operations under DCP
- This amount will be made up with additional DCP contributions in the same amount in 2021
- Arizona made over 150 kaf additional contributions above the DCP requirements

3 | 2020-2021 Water Accounting And System Conservation

| Arizona Lake Mead Contribution Volumes DCP Implementation & Related Actions | | ICS | 2019 (ac-ft) | 2020 Tier 0 (ac-ft) | 2021 Tier 0 (ac-ft) |
|--|--------------------------------|---------|-----------------|---------------------------|---------------------------|
| Arizona LBDCP (Tier 0: 192k ac-ft) | Ag Forbearance 3 Program | EC-ICS | 24,283 | 44,310 | |
| | Ag Forbearance 3 Program | DCP-ICS | | | 57,000 |
| | CAWCD Compensated Conservation | EC-ICS | | 3,124 | |
| | CAWCD Excess Water | | 119,942 | 133,174 | 146,392 |
| LBDCP Total | | | 144,225 | 180,608 | 203,392 |
| Additional CAWCD Conservation | CAWCD Compensated Conservation | EC-ICS | | | 3,500 |
| | CAWCD Total | | | | 206,892 |
| Arizona DCP Mitigation Offset (400k ac-ft total) | GRIC - Reclamation | EC-ICS | 100,000 | | |
| | GRIC - AWBA | EC-ICS | 17,000 | 33,000 | |
| | GRIC | EC-ICS | | 50,000 | 40,000 |
| | CRIT System Conservation | | | 50,000 | 50,000 |
| Total | | | 117,000 | 133,000 | 90,000 |
| Reclamation DCP | FMYN System Conservation | | | 10,000 | 13,933 |
| | MVIDD | | | 6,137 | 6,925 |
| | Total | | 0 | 16,137 | 20,858 |
| Additional Arizona ICS Creation | CRIT | EC-ICS | 6,274 | 3,736 | 4,685 |
| | Total | | 6,274 | 3,736 | 4,685 |
| Pilot System Conservation Program (PSCP) | Bullhead City | | 306 | 349 | 360 |
| | CRIT | | 26,805 | | |
| | FMYN | | 13,683 | | |
| | Total | | 40,794 | 349 | 360 |
| Total Arizona Lake Mead Contributions | | | 308,293 | 333,830 | 322,795 |

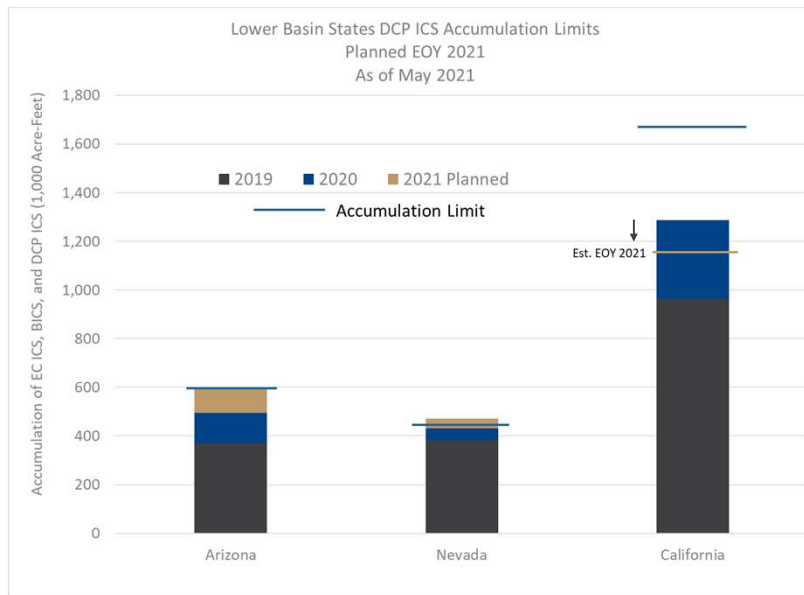
Total ICS Accumulation



- The ICS Program - developed under the 2007 Guidelines and with updates under DCP Agreements
- Valuable tool that has encouraged conservation in Lake Mead
- One incentive has been the flexibility in use of ICS credits, shown in action by MWD
- This program, together with other efforts, has helped to keep the Lower Basin out of shortage conditions for several years
- The accumulation of ICS credits totaled 2.84 MAF at the end of 2020



ICS and Accumulation Limits

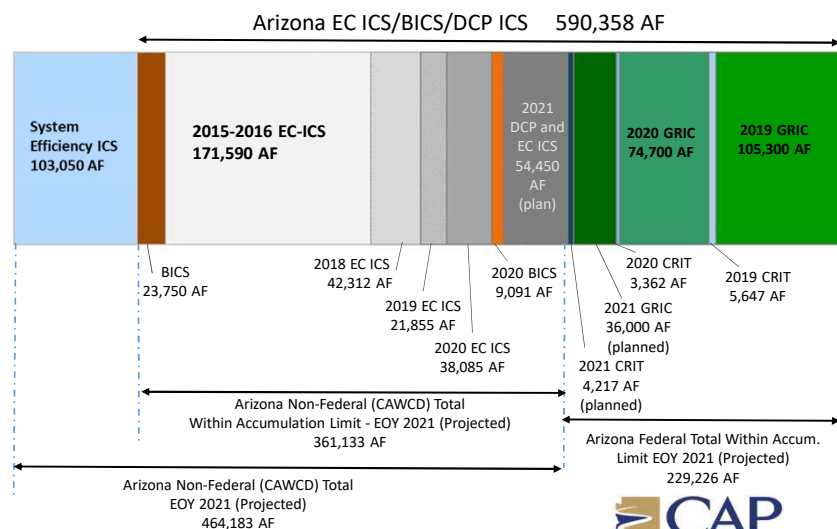


- ICS accumulation through 2020 (blue bars) shows totals below limits for each state
- ICS plans through 2021
 - Arizona will approach shared-capacity limit
 - Nevada may exceed shared-capacity limit
 - California is below limit
- Continued discussions on accumulation capacity sharing



Arizona ICS Accumulation – Planned EOY 2021

- Arizona approaching DCP ICS Accumulation Limit of 600 KAF
- By EOY2021, CAWCD projected to have created over 450 KAF of ICS credits
- With 2022 projected in Tier 1 Shortage, ICS creation plans are being developed
 - Potential for DCP ICS creation by CAWCD
 - Creation and accumulation limits may factor in
 - Federal ICS creation under consideration



INFORMATION BRIEF

BOARD OF DIRECTORS



Agenda Number 13

CONTACT: Chuck Cullom
623-869-2665
ccullom@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: Report on Potential Reclamation DCP System Conservation Project with Gila River Indian Community (*Water Supply*^) - Cullom

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

2022 CAWCD Board Strategic Plan

Water Supply: *Providing a reliable CAP water supply for the short- and long-term*

Stewardship and Sustainability: *Serving as proactive leaders in sustainability and responsible, collaborative stewards of CAP's Colorado River supply*

Public Trust, Partnerships and Leadership: *Earning and preserving public trust, building and maintaining partnerships, and providing informed water management leadership*

PREVIOUS BOARD ACTION/ACTIVITY:

None.

ISSUE SUMMARY/DESCRIPTION:

The Gila River Indian Community (GRIC) and Reclamation are proposing a system conservation project in 2021 of up to 40,000 acre-feet from GRIC's 2021 CAP water order. The system conservation project would contribute system water to Lake Mead as part of Reclamation's on-going commitment to provide 100,000 acre-feet or more per year as part of implementing the Lower Basin Drought Contingency Plan (DCP). If the project is implemented, it would provide up to 40,000 acre-feet of system conservation to Lake Mead in 2021 as part of Reclamations DCP commitment.

The system conservation project is based on GRIC turning back a portion of its 2021 CAP water currently ordered and scheduled for delivery to the Gila River Indian Reservation lands. In order for this system conservation project in the CAP system to generate benefits to Lake Mead, CAWCD will be asked to forgo remarketing of the turned back water. The process for Reclamation system conservation projects within the CAP system as part of the DCP is governed by the bilateral agreement between Reclamation and CAWCD, as well as the Lower Basin DCP agreement. The process requires concurrence by CAWCD that the conservation project reduces use of water with a recent history of consumptive use. Once Reclamation and GRIC provide CAWCD with the details of the project, CAWCD staff will review the project to assess the recent history of use. Staff will report the results of the assessment to the CAWCD Board.

In addition, Reclamation and GRIC have requested CAWCD forgo collection of Fixed OM&R for the up to 40,000 acre-feet of CAP Water under the GRIC system conservation project. Forgoing the collection of Fixed OM&R will increase the Fixed OM&R rate for 2021. In March 2020, the CAWCD Board provided supplemental guidance on the rate setting policy regarding system conservation projects with CAP water. The

policy guidance provided that CAP customers intending to participate in system conservation projects in the subsequent year indicate their intention in June-July to CAWCD staff for review of the project. At the August Board meeting, CAWCD staff would then inform the Board of qualifying projects for the coming year and the potential rate impacts derived from the project. CAWCD would seek input from CAP customers and stakeholders at the annual August CAP Customer Briefing regarding water supply and rate impacts. At the September Board Meeting, staff would share customer feedback and the Board would consider action as appropriate. The Reclamation-GRIC system conservation project is within the current year and thus is inconsistent with and outside the scope of the current policy guidance.

Preliminary estimates suggest the potential impact is in the range of \$2.25/acre-foot. The impact would be borne by all CAP customers who currently pay the Fixed OM&R rate. More detailed analysis will be provided to CAP customers at the June 24th CAP Water Users Briefing. In addition, a review of the May 24 month study suggests that additional system conservation may reduce the risks of Tier 2 conditions in 2023.

In order to follow the intent of the March 2020 supplemental rate setting guidance, staff are taking the following steps:

- Provide a briefing to the Board at the June Board meeting regarding the project.
- Work with Reclamation and GRIC to assess the recent history of use for the GRIC system conservation water.
- Seek input from the CAP customers regarding the potential rate and water supply impacts derived from the 2021 GRIC system conservation project at the June 24th CAP Water Users Shortage Briefing.
- Report on the assessment of the history of use, stakeholder and customer feedback and any additional details regarding the project at the August Board Meeting.
- Request Board consideration and action regarding Reclamation and GRIC's request to forgo collection of Fixed OM&R at the August Board meeting.

ATTACHMENTS:

1. Presentation



Report on Potential Reclamation's 2021 DCP System Conservation Project with Gila River Indian Community

Chuck Cullom

Colorado River Programs Manager

CAWCD Board Meeting

June 10, 2021

YOUR WATER. YOUR FUTURE.

Reclamation's DCP Commitment

Lower Basin Drought Contingency Plan Agreement

- Section 3. **Agreements of the Secretary:**

- B. Development of Colorado River System Water:** The Secretary will take affirmative actions to implement Lower Basin programs designed to ***create or conserve 100,000 acre-feet annum or more of Colorado River System water*** to contribute to conservation of water supplies in Lake Mead and other Colorado River reservoirs in the Lower Basin.....

Agreement Regarding Lower Basin Drought Contingency Plan Obligations (Reclamation – CAWCD Agreement)

- II. 3. c:

Secretary agrees to follow and implement those Secretarial provisions of the LBDPCA.....

2021 BOR - Gila River Indian Community System Conservation Project Summary

Goal: Conserve up to 40,000 acre-feet in 2021 from water ordered by the GRIC for delivery to the Gila River Indian Reservation

- **Part of BOR's DCP System Conservation commitment**
 - Will increase BOR's 2021 contribution by up to 40,000 acre-feet
 - Existing 2021 BOR include approximately 21,000 acre-feet of system conservation projects with Mohave Valley Irrigation and Drainage District and Fort McDowell Yavapai Nation
 - BOR expects approximately 25,000 acre-feet of system conservation to be made available in 2021 from the 242 Well Field Expansion
 - Estimated cost for the project is \$175/af
- **Reclamation is requesting CAWCD forgo collection of Fixed OM&R for the 2021 GRIC Project:**
 - Preliminary estimates show that the potential rate impacts are in the range of \$2.25/af for CAP Fixed OM&R rate payers
- **CAWCD Board Provided Supplemental Guidance Regarding System Conservation Projects with CAP Water (March 2020):**
 - Provides for CAWCD to forgo collection of Fixed OM&R after appropriate review and concurrence by staff
 - Provides for CAP customers to provide feedback on impacts to rates and water supplies
 - Provides for consideration in August and September **prior to the year of implementation**

3 | 2021 BOR – GRIC System Conservation



2021 BOR - Gila River Indian Community System Conservation Project Next Steps

- Staff to review the project and history of water use by GRIC
Reclamation is requesting CAWCD forgo collection of Fixed OM&R for the
- Staff to provide opportunity for input on the 2021 system conservation project at the June 24th CAP Water Users Shortage Briefing
- Staff to report on assessment and discussion at the August CAWCD Board Meeting
- Potential for CAWCD Board Action at the August Board Meeting

4 | 2021 BOR – GRIC System Conservation





**Thank You
Any Questions**

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INFORMATION BRIEF

BOARD OF DIRECTORS



Agenda Number 14

CONTACT: Chuck Cullom
623-869-2665
ccullom@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: Report on Potential 2021-2024 Interstate System Conservation Project with CAWCD, Reclamation, Metropolitan Water District of Southern California and Southern Nevada Water Authority (*Water Supply*[^]) - Cullom

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

2022 CAWCD Board Strategic Plan

Water Supply: *Providing a reliable CAP water supply for the short- and long-term*

Public Trust, Partnerships and Leadership: *Earning and preserving public trust, building and maintaining partnerships, and providing informed water management leadership*

Stewardship and Sustainability: *Serving as proactive leaders in sustainability and responsible, collaborative stewards of CAP's Colorado River supply.*

PREVIOUS BOARD ACTION/ACTIVITY:

None.

ISSUE SUMMARY/DESCRIPTION:

In order to support of Reclamation's commitment to achieve 100,000 acre-feet or more of system conservation contributions to Lake Mead as part of the implementation of the Lower Basin Drought Contingency Plan (DCP), the Metropolitan Water District of Southern California (MWD) is exploring sharing capacity within their Palo Verde Irrigation District (PVID) following agreement. The concept is to develop and implement a shared contributed funding agreement between Reclamation, MWD, CAWCD and the Southern Nevada Water Authority (SNWA). The opportunity is to conserve 60,000 acre-feet per year from August 2021 through August 2024 for a total of up to 180,000 acre-feet for the period. The estimated cost for the project is \$202/acre-foot of conservation, with an escalation for inflation included in 2022 – 2024. Analysis of the May 24 Month study indicates the PVID conservation project could serve to reduce the risks of Tier 2 shortage conditions in 2023 and 2024.

The opportunity to partner with Reclamation, MWD and SNWA to conserve additional water in Lake Mead supports 3 Key Result Areas (KRAs) in the CAWCD Board's 2022 Strategic Plan. The KRAs related to the potential additional interstate conservation project are:

- **Water Supply KRA:** Provide a reliable CAP water supply in the short- and long-term
- **Stewardship and Sustainability KRA:** Serving as proactive leaders in sustainability and responsible, collaborative stewards of CAP's Colorado River water supply
- **Public Trust, Partnerships and Leadership KRA:** Earning and preserving public trust, building

and maintaining partnerships and providing informed water management leadership.

The estimated system conservation for the project as well as the funding contribution are proposed as follows:

- Reclamation = 50% of project costs and project system conservation
- MWD = 16.67% of project costs and project system conservation
- CAWCD= 16.67% of project costs and project system conservation
- SNWA = 16.67% of project costs and project system conservation

If the full system conservation volumes are achieved in the project, then the resulting contributions benefiting Lake Mead are as follows:

- Reclamation= 90,000 acre-feet,\$18.75M, DCP contribution
- MWD = 30,000 acre-feet, \$6.25M, additional system conservation
- CAWCD= 30,000 acre-feet, \$6.25M, additional system conservation
- SNWA = 30,000 acre-feet, \$6.25M, additional system conservation
- Total Project = 180,000 acre-feet, \$37.5 M contribution to Lake Mead

The draft key terms under discussion for the Reclamation-MWD-CAWCD-SNWA contributed funding agreement are as follows:

- Shared funding contribution with 50% provided by Reclamation and MWD, CAWCD and SNWA each providing 16.67% of the remaining funds
- Reclamation's contribution and resulting conservation contributes to Reclamation's DCP commitment
- MWD, CAWCD and SNWA's contributions are additional system conservation
- If needed, MWD may, at its discretion, take over the payments from the other parties to provide California DCP contributions if necessary,
- 2021 costs are \$202/acre-foot, indexed price escalation for later years
- Agreement from August 2021 through August 2024, or three years of conservation
- Up to 60,000 acre-feet per year.

The draft key terms are being refined and finalized. Staff intend to provide an update on discussions and request the Board's consideration and action at the August CAWCD Board Meeting.

ATTACHMENTS:

1. Presentation



Report on Potential 2021-2024 Interstate System Conservation with CAWCD, Reclamation, MWD and SNWA

Chuck Cullom

Colorado River Programs Manager

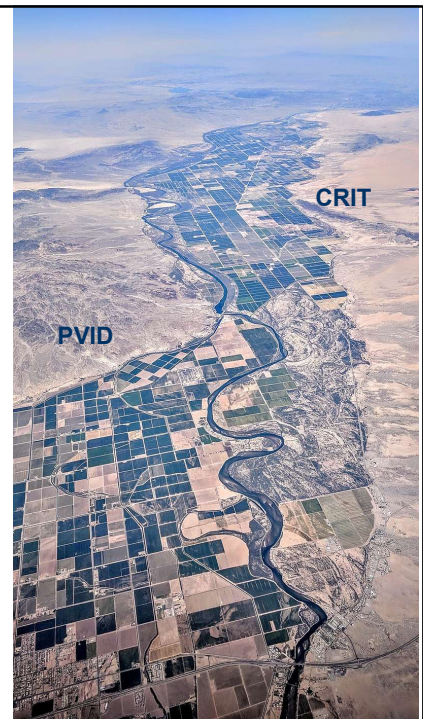
CAWCD Board Meeting

June 10, 2021

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Palo Verde Irrigation District

- Located in Blythe California
- Participates in system conservation and transfers with MWD
- First Priority in California
- 2020 PVID CU = 346,085 af



2021 – 2024 Interstate System Conservation Project Summary

Goal: Conserve up to 60,000 acre-feet per year from August 2021 – August 2024 (3 years) for a total of up to 180,000 acre-feet

- **Partners: BOR, CAWCD, MWD, SNWA and Palo Verde Irrigation District (PVID - CA)**
 - MWD willing to sharing their conservation capacity with PVID
 - 3 year project
 - System Conservation
 - Estimated cost for the project is \$202/af, with escalation
- **Reclamation contribution to DCP system conservation commitment, non-Federal parties for additional system conservation**
 - BOR = 50%
 - Non-Federal parties = 16.67% each
 - CAWCD share up to ~\$2.25M per year and ~10,000 acre-feet of additional system conservation per year
- **MWD retains ability to opt out if MWD requires the conservation for its DCP commitments):**

3 | Interstate System Conservation Project



2021 – 2024 Interstate System Conservation Project Summary

Goal: Conserve up to 60,000 acre-feet per year from August 2021 – August 2024 (3 years) for a total of up to 180,000 acre-feet

- **Next Step**
 - Refine agreement
 - Consideration and action at August CAWCD Board Meeting

4 | Interstate System Conservation Project





**Thank You
Any Questions**

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ACTION BRIEF

BOARD OF DIRECTORS



Agenda Number 16

CONTACT: Chuck Cullom Greg Adams
623-869-2665 623-869-2124
ccullom@cap-az.com gadams@cap-az.com

MEETING DATE: Thursday, June 10, 2021

AGENDA ITEM: Discussion and Consideration of Action to Approve Joint Colorado River Augmentation Opportunity with the Arizona Department of Water Resources and the Metropolitan Water District of Southern California Regional Recycled Water Program (*Stewardship and Sustainability*^) - Cullom/Adams

RECOMMENDATION: Staff recommend authorizing the CAWCD Board President or his designee execute the following agreements in substantially the same form as the attached agreements:

1. Agreement to Contribute Funds for Environmental Planning Phase Services Related to the Regional Recycled Water Program – Among MWD, ADWR and CAWCD
2. Joint Funding Agreement Between the Arizona Department of Water Resources and the Central Arizona Water Conservation District
3. Memorandum of Understanding Among the Arizona Department of Water Resources, Arizona Water Banking Authority and the Central Water Conservation District Regarding Investigation of Augmentation Opportunities Through the Regional Recycled Water Program

FISCAL IMPLICATIONS: Yes

Impact on Budget:

Potential impact of up to \$6M contribution from CAWCD to the Regional Recycled Water Program through the environmental permitting period, projected to extend through 2025. Costs to be included in future budget projections.

Additional spending authority requested:

Impact on Reserves:

Up to \$6M decrease in water storage reserves.

Impact on Rates:

No rate impact.

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

2022 CAWCD Board Strategic Plan

Water Supply: *Providing a reliable CAP water supply for the short- and long-term*

Public Trust, Partnerships and Leadership: *Earning and preserving public trust, building and maintaining partnerships, and providing informed water management leadership*

Stewardship and Sustainability: *Serving as proactive leaders in sustainability and responsible, collaborative stewards of CAP's Colorado River supply*

PREVIOUS BOARD ACTION/ACTIVITY:

May 6, 2021 Board Meeting presentation and discussion

ISSUE SUMMARY/DESCRIPTION:

Background – Strategic Interests

The Central Arizona Water Conservation District (CAWCD) has long understood the risks and vulnerabilities of its Colorado River supply due to prolonged drought, changing climatic conditions and overallocation in the Colorado River system. In response to these risks, CAWCD has worked collaboratively to explore and develop opportunities to improve the long-term reliability of the CAWCD's Colorado River supply to benefit CAP long-term customers. These efforts fall under the general categories of firming and augmentation.

The CAWCD Board, in its 2022 Strategic Plan, recognized the importance of sustaining the CAP water supply not only in the vision and mission statements, but also 3 key result areas (KRAs). The KRAs related to firming and augmentation are:

- **Water Supply KRA: Provide a reliable CAP water supply in the short- and long-term**
- **Stewardship and Sustainability KRA: Serving as proactive leaders in sustainability and responsible, collaborative stewards of CAP's Colorado River water supply**
- **Public Trust, Partnerships and Leadership KRA: Earning and preserving public trust, building and maintaining partnerships and providing informed water management leadership.**

Background – Risks and Vulnerabilities

CAP's Colorado River water supply is vulnerable to shortage reductions under the 2007 Guidelines and the Drought Contingency Plans (DCP). The risks of shortage reductions are driven largely by hydrology and uses. Based on Reclamation's most recent Colorado River Simulation System (CRSS) modeling, the risk of deeper reductions increases over time. In the short-term, through 2026, the risks appear to be increasing for Tier 3 conditions (Mead<1025'). By the mid-2030s and beyond, the risks of Tier 3 conditions continue to increase. Of note, both the '07 Guidelines and DCP call for additional, unspecified actions, likely in the form of new reductions, to address the risks of Mead <1025'. While it is uncertain how future shortage reductions will be allocated, the risk and vulnerability to CAP's water supply is expected to increase in the future.

CAWCD's Firming and Augmentation Strategy

Given the Board's guidance in earlier Strategic Plans and amplified in its 2022 Strategic Plan, as well as in response to the increasing risks and vulnerabilities, CAP staff embarked on a multi-pronged strategy to develop firming and augmentation opportunities. The strategy is designed to develop opportunities for short-term and long-term investment in projects, programs and policies to improve the sustainability and reliability of CAP supplies. The strategy looks to develop an array of options and strategies, recognizing there is no single project, technology or opportunity to address all risks. The following is a summary of the three phases of firming and augmentation development:

Phase 1 - Exploration and identification of firming and augmentation opportunities through intrastate, interstate and binational partnerships. Phase 1 may include investment in studies, investigations and preliminary permitting and design components.

Phase 2 - The preparation of detailed cost and delivery analyses, comparison among alternatives, and preparation of necessary long-term agreements. Additional investments may be required to refine yield and delivery components.

Phase 3 - The third phase is the execution of necessary agreements, including investment/payments as necessary, including implementation of projects and delivery of firming and augmentation supplies.

MWD's Regional Recycled Water Program (RRWP) Opportunity

The Metropolitan Water District of Southern California (MWD) is exploring the development of an augmentation opportunity by recycling effluent from the Joint Water Pollution Control Plant (JWPCP), currently discharged to the Pacific Ocean. MWD, in cooperation with the Los Angeles County Sanitation District (LACSD), will apply additional advanced water treatment to the effluent stream from the JWPCP. The resulting recycled water supply will be delivered into the MWD system for delivery. MWD estimates approximately 170,000 af/yr of recycled water will be available at full buildout. The recycled water will offset MWD's imported supplies from the State Water Project and the Colorado River. The replacement of Colorado River water with the RRWP supply creates an opportunity to augment the Colorado River through interstate exchange.

MWD is initiating the first phase of the project through environmental permitting and initial design. MWD estimates its costs for the permitting and initial design phase is approximately \$25M. The goal is to complete this first phase by 2025. MWD estimates that project will be fully developed in the early 2030s.

In 2020, MWD sought partners for the project. In August 2020, ADWR and CAWCD submitted a joint letter of interest to MWD regarding the potential for an augmentation partnership. In December 2020, the Southern Nevada Water Authority executed an agreement with MWD. The MWD-SNWA agreement includes a commitment for SNWA to invest up to \$6M in the initial development of the RRWP concept. The agreement provides that if either party elects to forgo development of the water supply opportunity, for any reason, MWD will refund SNWA's investment. Through participation in the permitting and initial design, SNWA intends to work cooperatively with MWD to develop an augmentation and exchange agreement termed a "development agreement."

Proposed MWD-ADWR-CAWCD Firming and Augmentation Opportunity Summary

CAWCD and ADWR are proposing a similar arrangement to the MWD-SNWA partnership to develop a potential water supply opportunity. The proposal includes a commitment from ADWR and CAWCD to provide up to \$6M to contribute to MWD's cost for environmental permitting services for the RRWP. Under the proposal, CAWCD would contribute up to \$5M while ADWR would provide up to \$1M. In the event ADWR is unable to provide funding, CAWCD will provide up to \$6M to the project. By implementing the agreement, MWD-ADWR-CAWCD intend to work cooperatively to develop an appropriate interstate exchange and delivery framework to create the water supply opportunity.

In order to facilitate the \$6M funding contribution from ADWR and CAWCD, those parties have developed a contributed funding agreement. The contributed funding agreement outlines the funding commitments between ADWR and CAWCD. In addition, ADWR, CAWCD and the Arizona Water Banking Authority (AWBA) are committing to working cooperatively to benefit CAP long-term customers if the RRWP opportunity is developed and an interstate exchange is implemented.

Staff recognize that the cost framework for RRWP, even at this early stage, is significantly higher than

previously completed firming and augmentation opportunities. This is consistent with the general expectation of developing lower cost alternatives prior to the implementation of more expensive options; however, as we approach 2030 and beyond, the pool of lower cost alternatives is likely to dwindle. Therefore, it is consistent with our objective to explore the opportunities that are currently available for development, understanding some of those options will be likely be more expensive alternatives. Additionally, staff recognize that significant details regarding the potential for RRWP interstate exchange and CAP water delivery parameters remain to be developed. CAWCD's goal for participating at this early stage, is to guide the development of key interstate and CAP delivery details to the benefit of CAP long-term customers. The development of interstate exchanges and CAP delivery parameters are an important component for a larger array of future firming and augmentation opportunities since those opportunities will likely include similar exchange and delivery elements.

The interstate parties (MWD, ADWR and CAWCD) will have multiple decisions points along the way, about whether to proceed with the next phase or not. At each step, additional information about scope, schedule and cost will be available to support decision-making. The costs for ADWR and CAWCD associated with this preliminary phase (up to \$6 million) are refundable if either party chooses not to proceed with a development agreement. Likewise, the parties can choose not to proceed at some future date to acquire, exchange and deliver any supplies that may ultimately be produced by this project. In the meantime, participating in this initial phase will establish and preserve Arizona's opportunity to participate in future phases. As the RRWP program moves forward, CAWCD and ADWR will be able to simultaneously explore and develop other augmentation and firming opportunities, and explore and develop any appropriate policy and statutory changes associated with this project or any other opportunities that may arise.

To summarize, the RRWP represents a unique, low risk opportunity to explore the early phase of a significant augmentation opportunity, as well as frame exchange and delivery parameters necessary for future projects. The RRWP concept is consistent with three of the Board's 2022 Strategic Plan Key Result Areas: Water Supply, Steward and Sustainability, and Public Trust, Partnership and Leadership. CAWCD is working in partnership with ADWR to explore and refine the opportunity. CAWCD's investment is fully refundable in the event that CAWCD or MWD opt to forgo completion of the water supply or the exchange, for any reason. ADWR is a partner in the concept and indicates that the concept is consistent with the goals set forth by Governor Ducey and the Governor's Water Augmentation, Innovation, and Conservation Council. Staff recognize that significant exchange and delivery details must be developed prior to long-term commitments and additional investments. Staff believe that the RRWP opportunity warrants further exploration due to:

- Very low risk refund framework,
- Potential to develop and deliver a higher priority supply to benefit CAP long-term customers,
- Opportunity to deepen and expand intrastate and interstate partnerships, and
- Frame the rules for future exchange and delivery options.

Three Agreements - Key Terms

To implement the MWD-ADWR-CAWCD augmentation opportunity, three agreements are necessary. The key terms for the agreements are outlined below.

The key terms for the *Agreement to Contribute Funds for Environmental Planning Phase Services Related to the Regional Recycled Water Program* are summarized below. The agreement is attached.

- Contribution from ADWR and CAWCD up to \$6M for MWD expenditures related to environmental planning phase services for permitting and preliminary design of the RRWP

- Expenditures are fully refundable in the event that MWD or the Arizona parties elect to forgo execution of a Development Agreement (the agreement providing for development and exchange of water)
- MWD will provide invoices for environmental planning phase services for the RRWP quarterly with ADWR-CAWCD paying approximately 24% of the costs, up to \$6M
- CAWCD will pay the invoices
- Appropriate review and discussion provisions regarding the invoice submittals
- ADWR-CAWCD participate in the development of the project, exchange and delivery discussions

The key terms for the *Joint Funding Agreement Between ADWR and CAWCD* are summarized below. The agreement is attached.

- CAWCD will contribute up to \$5M to pay the invoices per the MWD-ADWR-CAWCD Agreement
- ADWR will contribute up to \$1M to pay invoices per the MWD-ADWR-CAWCD Agreement
- In the event that ADWR is unable to contribute up to \$1M, CAWCD will contribute the ADWR shortfall
- CAWCD will invoice ADWR for its share of the MWD invoices until ADWR funds are expended
- If ADWR or CAWCD elect to forgo participation in the MWD Development Agreement, the funds contributed per the MWD-ADWR-CAWCD will be refunded from MWD and distributed consistent with ADWR and CAWCD contributions

The key terms for the *Memorandum of Understanding Among ADWR-AWBA-CAWCD Regarding Investigation of Augmentation Opportunities Through the RRWP* are outlined below. The agreement is attached.

- CAWCD-ADWR-AWBA will work cooperatively to explore and develop as appropriate an exchange and delivery framework to benefit Arizona and CAP long-term contractors consistent with existing authorities and policy
- The exploration is not a commitment by any party for executing a Development Agreement with MWD

CAWCD intends to utilize 4-cent property tax funds to pay for environmental planning services fees related to the RRWP since the current goal is to provide the future water supply for CAP M&I firming through the AWBA, consistent with existing authorities and policies.

SUGGESTED MOTION:

I move that the Board authorize the CAWCD Board President or his designee to execute the following in substantially the same form as the attached agreements:

1. Agreement to Contribute Funds for Environmental Planning Phase Services Related to the Regional Recycled Water Program – Among MWD, ADWR and CAWCD
2. Joint Funding Agreement Between the Arizona Department of Water Resources and the Central Arizona Water Conservation District
3. Memorandum of Understanding Among the Arizona Department of Water Resources, Arizona Water Banking Authority and the Central Water Conservation District Regarding Investigation of Augmentation Opportunities Through the Regional Recycled Water Program

ATTACHMENTS:

1. Presentation
2. Agreement to Contribute Funds for Environmental Planning Phase Services Related to RRWP
3. Joint Funding Agreement
4. Memorandum of Understanding Regarding Investigation of Augmentation Opportunities Through a RRWP



Consideration and Potential Action to Approve Joint Colorado River Augmentation Opportunity with the Arizona Department of Water Resources (ADWR) and the Metropolitan Water District of Southern California (MWD) Regional Recycled Water Project (RRWP)

Chuck Cullom

Colorado River Programs Manager

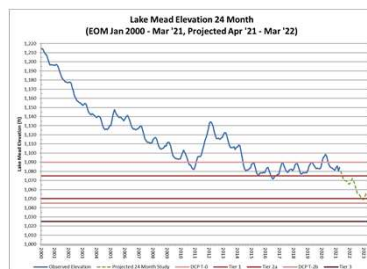
CAWCD Board Meeting

June 10, 2021

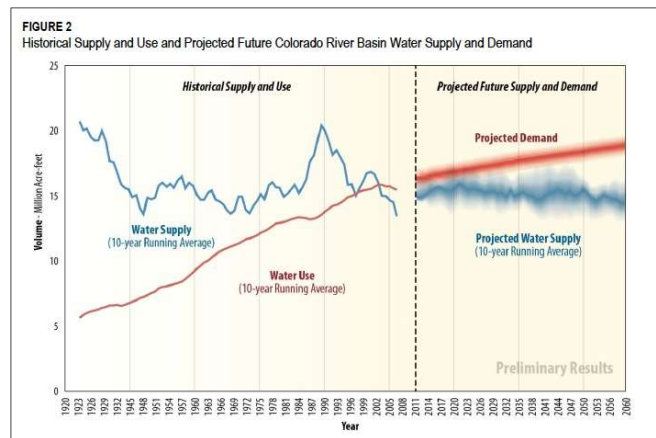
YOUR WATER. YOUR FUTURE.

Near-term and Long-term Risks and Vulnerabilities in the Colorado River System:

- Colorado River Water Supply Imbalance:
 - Risks to the CAP water supply in the short and long-term
- Supply/Demand Imbalance:
 - Structural Deficit



2 | MWD RRWP Augmentation and Firming Opportunity



CAWCD Board 2022 Strategic Plan: Key Result Areas - Firming & Augmentation

- **Water Supply:**
 - Provide a reliable CAP water supply in the short and long-term
- **Stewardship and Sustainability:**
 - Serving as proactive leaders in sustainability and responsible, collaborative stewards of CAP's Colorado River water supply
- **Public Trust, Partnerships and Leadership:**
 - Earning and preserving public trust, building and maintaining partnerships and providing informed water management leadership

3

MWD RRWP Augmentation and Firming Opportunity



CAWCD Firming & Augmentation Strategy

Goal: Improve reliability of CAWCD's Colorado River supply to directly benefit CAP long-term customers

- **Phase 1:**
 - Exploration and identification of firming and augmentation opportunities through partnerships. May include investment to define the opportunity.
- **Phase 2:**
 - Preparation of detailed cost and delivery analyses, comparison among alternatives, and preparation of necessary long-term agreements.
- **Phase 3:**
 - Execution of necessary agreements, including investment/payments as necessary, including implementation of projects and delivery of firming and augmentation supplies

4

MWD RRWP Augmentation and Firming Opportunity



MWD Regional Recycled Water Project Firming & Augmentation Opportunity Summary

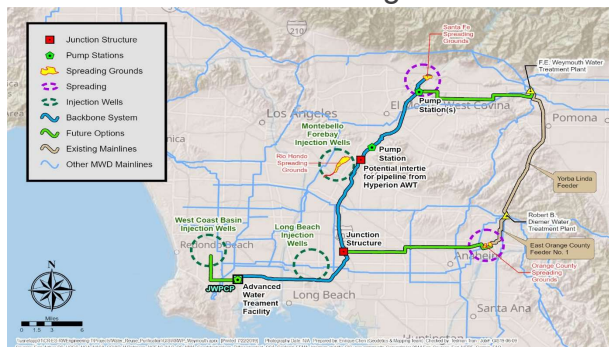
- **Concept:**
 - Recycle water currently discharged to the Pacific Ocean for delivery in the MWD system to replace imported supplies
 - Opportunity to augment Colorado River supplies through interstate exchange
- **Yield:**
 - Approximately 170,000 af/yr
- **Timeline:**
 - Full buildout – mid 2030's
- **Initial Cost for Environmental Permitting**
 - MWD's costs ~ \$25M

5 | MWD RRWP Augmentation and Firming Opportunity



MWD Regional Recycled Water Project Firming & Augmentation Opportunity Summary

- Advanced treatment of effluent from Joint Water Pollution Control Plant
- Delivered in MWD System
- Colorado River Exchange



Potential for ADWR-CAWCD Firming & Augmentation Participation

- **ADWR – CAWCD Letter of Interest (Aug 2020) Yield:**
 - Approximately 170,000 af/yr
- **MWD – SNWA Environmental Planning Funding Agreement:**
 - SNWA commits to contribute up to \$6M
 - Fully refundable if either party elects to forgo development of the water resource and exchange

7

MWD RRWP Augmentation and Firming Opportunity



3 Agreements for Potential for ADWR-CAWCD Firming & Augmentation Participation

- **Agreement to Contribute Funds for Environmental Planning Phase Services Related to RRWP (MWD-ADWR-CAWCD):**
 - CAWCD & ADWR commit to contribute up to \$6M
 - Fully refundable if either party elects to forgo development of the water resource and exchange
- **Joint Funding Agreement Between ADWR-CAWCD:**
 - CAWCD & ADWR commit to contribute up to \$6M, with an estimated \$5M from CAWCD and up to \$1M from ADWR
 - CAWCD will backstop under-funding from ADWR
 - Fully refundable consistent with the MWD-ADWR-CAWCD Agreement
- **MOU Between ADWR-AWBA-CAWCD Regarding Investigations of Augmentation Opportunities Through RRWP:**
 - Agreement to work cooperatively to develop exchange and delivery to provide direct benefits CAP long-term contractors
- **Use of CAWCD 4 cent funds for initial investments**

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MWD RRWP Augmentation and Firming Opportunity



Summary

- MWD RRWP is an opportunity to participate in a Colorado River firming and augmentation project
- Initial funding commitment is estimated \$5M fully refundable
- Partnerships with MWD, ADWR and AWBA to potentially provide direct benefits to CAP long-term customers
- Cooperatively define mechanism to guide development of interstate exchange and delivery components for future augmentation and firming projects
- Long-term commitment to be evaluated once cost, delivery and exchange details are developed, likely toward the end of the Guidelines period



9 | Preparedness for Interruption of Electrical Supply



**Thank You
Any Questions**

YOUR WATER. YOUR FUTURE.

AGREEMENT TO CONTRIBUTE FUNDS FOR ENVIRONMENTAL PLANNING
PHASE SERVICES RELATED TO THE REGIONAL RECYCLED WATER
PROGRAM

This FUNDING AGREEMENT (“Agreement”) is made by and between THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (“Metropolitan”) the ARIZONA DEPARTMENT OF WATER RESOURCES (“ADWR”) and the CENTRAL ARIZONA WATER CONSERVATION DISTRICT (“CAWCD”), who may be referred to individually as a “Party” or collectively as the “Parties.” ADWR and CAWCD may be referred to collectively as the “Arizona Parties.”

BACKGROUND

- A. Metropolitan is a water district established under the California Metropolitan Water District Act, codified in Section 109-1, et. seq., of the Appendix to West’s Annotated California Water Code, for the purpose of serving water to southern California. ADWR is an agency of the State of Arizona established pursuant to Title 45 of the Arizona Revised States. CAWCD is a political subdivision of the State of Arizona established pursuant to Arizona Revised Statutes §§ 48-3701, et. seq., which operates the Central Arizona Project pursuant to contracts and agreements with the United States.
- B. Metropolitan and the County Sanitation District No. 2 of Los Angeles County (“Sanitation District”) are working together to develop a Regional Recycled Water Program (“Program”). As currently envisioned, the Program will produce and is planned to deliver up to 150 million gallons per day, or approximately 168,000 acre-feet per year, of purified water from a new advanced water treatment facility located at the Sanitation District’s Joint Water Pollution Control Plant in Carson, California (“JWPCP”). The Program also includes a new conveyance system that would deliver water to groundwater basins within Metropolitan’s service area for indirect potable reuse and potentially to two Metropolitan treatment plants for direct potable reuse. It is anticipated that the Program will be constructed in a phased approach so that the eventual ultimate capacity of the program can take into account the availability of water at the JWPCP and the anticipated demands of Metropolitan’s member agencies both for purposes of groundwater replenishment and direct potable reuse through raw water augmentation.
- C. On August 26, 2020, the Arizona Parties submitted a letter to Metropolitan expressing their interest in participating with Metropolitan on development of the Project, including the anticipation that the Arizona Parties would provide resources to assist in the development of the Program in exchange for receiving water made available by the Program in the future. The Parties intend to explore entering into

a future development agreement to further define the responsibilities of the Parties in the development of the Program.

- D. In order to evaluate the Program, Metropolitan intends to conduct an environmental review along with the Sanitation District. Metropolitan's approved budget for the environmental review is \$30 million. The actual costs to complete the environmental review will be tracked and may differ from the originally budgeted amount. The Parties intend through this Agreement for the Arizona Parties to contribute funds to Metropolitan for Metropolitan's use in conducting the environmental review.
- E. Concurrently with the execution of this Agreement, the Arizona Parties are entering into the Joint Funding Agreement between ADWR and CAWCD ("Arizona Parties Joint Funding Agreement") to facilitate the Arizona Parties' obligations to contribute funds to Metropolitan pursuant to this Agreement.

TERMS

1. The Arizona Parties will provide to Metropolitan the lesser of either \$6 million or 24 percent of Metropolitan's costs for conducting analyses, investigations, evaluations, studies and public outreach, as needed, to complete any environmental review and documentation required for design and construction of the Program (collectively "Environmental Planning Phase Services"). These Environmental Planning Phase Services include environmental evaluation, engineering and other technical support, and public outreach, and will conform to and comply with the requirements of the California Environmental Quality Act and any other applicable environmental requirements, permitting processes and laws.
2. Metropolitan shall provide an accounting and invoice CAWCD for the Arizona Parties' funding commitment under this Agreement. Metropolitan shall invoice CAWCD on a quarterly basis for 24 percent of the costs incurred by Metropolitan for Environmental Planning Phase Services, up to a maximum cumulative amount of \$6 million. CAWCD shall have the right to review and confirm that the invoice conforms to the terms of this Agreement, and if so approved, CAWCD shall pay the invoice within 30 days of receipt. With each payment, CAWCD shall provide Metropolitan an accounting of the portion of each payment attributable to funds contributed by each Arizona Party.
3. This Agreement does not: obligate Metropolitan to approve or develop the Program; obligate Metropolitan to make water available to the Arizona Parties through exchange or other mechanism; obligate the Arizona Parties to agree to such exchange; allocate any Program water to the Arizona Parties; or set any precedent

for the terms of any such allocation. Such terms may be provided for in a separate Development Agreement among the Parties.

4. If Metropolitan does not approve or develop the Program or if Metropolitan or the Arizona Parties determine to not enter into a separate Development Agreement to allocate Program water to the Arizona Parties, or their designees, then Metropolitan will return the funds that the Arizona Parties provided to Metropolitan under this Agreement, without any interest. If ADWR and Metropolitan elect to enter into a Development Agreement and CAWCD elects not to enter into a Development Agreement, Metropolitan will return the funds accounted for as CAWCD contributions as provided in Paragraph 2 to CAWCD without any interest. If CAWCD and Metropolitan elect to enter into a Development Agreement and ADWR elects not to enter into a Development Agreement, CAWCD will reimburse ADWR for all funds accounted for as ADWR contributions as provided in Paragraph 2, pursuant to the Arizona Parties Joint Funding Agreement.
5. If the Parties enter into a separate Development Agreement which allocates Program water to the Arizona Parties or their designees, the Development Agreement will credit the Arizona Parties with the funds provided by the Arizona Parties under this Agreement.
6. Metropolitan and the Arizona Parties will also explore whether certain in-kind services could be provided by the Arizona Parties in support of the Environmental Planning Phase Services.
7. This Agreement is effective as of the date the last Party executes the Agreement and will terminate on December 31, 2035, provided that the Parties may agree to extend the terms of this Agreement.
8. This Agreement is not intended by the Parties to create any right in or benefit to Parties other than ADWR, CAWCD and Metropolitan. This Agreement does not create any third-party beneficiary rights or causes of action.
9. The failure of any Party to enforce at any time, or for any period of time, the provisions hereof shall not be construed as a waiver of such provisions or the rights of such Party to enforce each and every such provision.
10. This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Agreement.
11. The Parties to this Agreement are hereby notified of and acknowledge Arizona Revised Statutes § 38-511 regarding cancellation for conflict of interest.

12. This Agreement shall be subject to available funding, and nothing in this agreement shall bind ADWR to expenditures in excess of funds appropriated and allotted for the purposes outlined in this agreement.
13. Throughout the term of the Agreement and for five years after termination, all records relating to the Agreement shall be subject to inspection and audit by the Parties.
14. The Parties shall attempt to resolve all claims, disputes, controversies, or other matters in question between the Parties arising out of, or relating to this Agreement promptly, equitably, and in good faith. The Parties also agree to resolve all disputes arising out of or relating to this Agreement through arbitration to the extent required by law or court rules.
15. This Agreement may be modified, amended or revoked only by the express written agreement of the Parties hereto.
16. This Agreement is the entire agreement of the Parties and no understandings or obligations not expressly set forth in this Agreement are binding on the Parties.
17. The undersigned representative of each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Agreement and to legally bind the Party to it.
18. The Parties agree to comply with all applicable Federal and State laws, rules and regulations relating to equal opportunity and non-discrimination.
19. Any notice under this Agreement must be in writing and addressed as follows:

The Metropolitan Water District of Southern California
Post Office Box 54153
Los Angeles, CA 90054-0153
Attn: Deven Upadhyay
Assistant General Manager/Chief Operating Officer
With a courtesy copy by email to DUpadhyay@mwdh2o.com

Arizona Department of Water Resources
Attn: Director
P.O. Box 36020
Phoenix, AZ 85067-6020
With a courtesy copy by email to tbuschatzke@azwater.gov

Central Arizona Water Conservation District
c/o General Manager
P.O. Box 43020

Phoenix, Arizona 85080-3080

With a courtesy copy by email to tcooke@cap-az.com

A properly addressed notice will be effective on the day of delivery, if delivered directly by a Party or by a nationally recognized delivery service, or on the third day after mailing, if sent postage prepaid by U.S. Mail. The Parties shall transmit a courtesy copy of any notice to the other Party by email on the day the notice is sent.

Any Party may change the address listed in this section by providing five days' notice to the other Parties.

**Agreement to Contribute Funds for Environmental Planning Phase Services
Related to the Regional Recycled Water Program**

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: _____
Jeffrey Kightlinger
General Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Marcia L. Scully
General Counsel

**Agreement to Contribute Funds for Environmental Planning Phase Services
Related to the Regional Recycled Water Program**

ARIZONA DEPARTMENT OF WATER RESOURCES

By: _____
Thomas Buschatzke
Director

Date: _____

APPROVED AS TO FORM:

By: _____
Nicole D. Klobas
Deputy Chief Counsel

**Agreement to Contribute Funds for Environmental Planning Phase Services
Related to the Regional Recycled Water Program**

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Theodore C. Cooke, D.B.A.
General Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Jay M. Johnson
General Counsel

**JOINT FUNDING AGREEMENT BETWEEN THE ARIZONA DEPARTMENT
OF WATER RESOURCES AND THE CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

This Joint Funding Agreement (“Joint Funding Agreement”) is made by and between the Arizona Department of Water Resources (“ADWR”) and the Central Arizona Water Conservation District (“CAWCD”), who may be referred to individually as a “Party” or collectively as the “Parties.”

BACKGROUND

- A. On August 26, 2020, ADWR and CAWCD submitted a letter to The Metropolitan Water District of Southern California (“Metropolitan”) expressing their interest in participating with Metropolitan on the development of its Regional Recycled Water Program (“Program”). The Program, as currently envisioned, is planned to produce and deliver up to approximately 168,000 acre-feet per year of purified water from a new advanced water treatment facility located at the County Sanitation District No. 2 of Los Angeles County’s Joint Water Pollution Control Plant in Carson, California (“JWPCP”). CAWCD and ADWR anticipate that the Program may provide significant opportunities to augment the Colorado River, which could result in increased reliability and resiliency of the Colorado River supply for Arizona water users.
- B. Concurrently with the execution of this Joint Funding Agreement, the Parties are entering into the Agreement to Contribute Funds for Environmental Planning Phase Services Related to the Regional Recycled Water Program among Metropolitan, ADWR and CAWCD (“RRWP Contributed Funds Agreement”). Pursuant to the RRWP Contributed Funds Agreement, ADWR and CAWCD commit to providing to Metropolitan a combined total of the lesser of either \$6,000,000 or 24 percent of Metropolitan’s costs for conducting analyses, investigations, evaluations, studies and public outreach, as needed, to complete any environmental review and documentation required for the design and construction of the Program (“Arizona Parties Funding Commitment”). If Metropolitan approves and develops the Program, ADWR, CAWCD and Metropolitan intend to explore entering into a future development agreement to further define the responsibilities of the Parties in the development on the Program and to allocate Program water to ADWR, CAWCD, and/or their designees (“Development Agreement”). If Metropolitan does not approve or develop the Program or if ADWR and CAWCD determine not to enter into a subsequent Development Agreement to allocate Program water to the ADWR, CAWCD or their designees, then Metropolitan will return the funds ADWR and CAWCD provided to Metropolitan under the RRWP Contributed Funds Agreement.

- C. The Parties believe that water developed through the Program may be a resource available to increase the reliability of CAP long-term contracts. The Parties intend to work collaboratively on any agreements, programs or partnerships necessary to develop the Program water supply for such purposes, including, but not limited to, partnerships with the Arizona Water Banking Authority.
- D. Subject to appropriations from the State Legislature, ADWR anticipates it will contribute a maximum of \$1,000,000 toward the Arizona Parties Funding Commitment.
- E. CAWCD is willing to contribute the remaining up to \$6,000,000 of the Arizona Parties' Funding Commitment, and to backstop the Arizona Parties Funding Commitment in the event ADWR does not receive adequate appropriations from the State Legislature.

TERMS

- 1. This Joint Funding Agreement shall be effective when both of the following have occurred: 1) Both Parties have signed this Joint Funding Agreement and 2) All parties to the RRWP Contributed Funds Agreement have signed the RRWP Contributed Funds Agreement. This Joint Funding Agreement shall terminate on December 31, 2035, unless the Parties agree to extend the term.
- 2. CAWCD shall pay all invoices for the Arizona Parties Funding Commitment to Metropolitan pursuant to the RRWP Contributed Funds Agreement, up to the full amount of the Arizona Parties Funding Commitment. Upon receipt of all such invoices, CAWCD will promptly forward a copy of the invoices to ADWR. ADWR shall review the invoices and notify CAWCD of any concerns that the invoice does not conform to the terms of the RRWP Contributed Funds Agreement within 10 days of receipt of the invoice.
- 3. Subject to Paragraph 7 below, ADWR shall be responsible for the first \$1,000,000 of the Arizona Parties Funding Commitment.
- 4. If Metropolitan does not approve or develop the Program or enter into a future Development Agreement with CAWCD and ADWR to allocate Program water to CAWCD and ADWR or their designees and Metropolitan returns the funds CAWCD paid to Metropolitan pursuant to the RRWP Contributed Funds Agreement, then CAWCD will return to ADWR the funds ADWR paid to CAWCD pursuant to this Joint Funding Agreement.

5. If CAWCD enters into a Development Agreement with Metropolitan, but ADWR elects not to enter into a Development Agreement, CAWCD will reimburse ADWR the funds ADWR paid to CAWCD pursuant to this Joint Funding Agreement without any interest, unless otherwise agreed to by the Parties in writing.
6. The Parties to this Agreement are hereby notified of and acknowledge Arizona Revised Statutes § 38-511 regarding cancellation for conflict of interest.
7. This Joint Funding Agreement shall be subject to available funding, and nothing in this agreement shall bind the State to expenditures in excess of funds appropriated and allotted for the purposes outlined in this agreement.
8. The Parties shall attempt to resolve all claims, disputes, controversies, or other matters in question between the Parties arising out of, or relating to this Joint Funding Agreement promptly, equitably, and in good faith. The Parties also agree to resolve all disputes arising out of or relating to this Joint Funding Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. §§ 12-133 and 12-1518.
9. This Joint Funding Agreement is governed by and shall be construed and interpreted in accordance with Arizona law. Any action to resolve any dispute regarding this Joint Funding Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.
10. This Joint Funding Agreement is solely for the benefit of the signatory Parties and does not create, nor shall it be construed to create, rights in any third party unless expressly provided herein. No third party may enforce the terms of this Joint Funding Agreement.
11. This Joint Funding Agreement may be modified, amended or revoked only by the express written agreement of the Parties hereto.
12. This Joint Funding Agreement is the entire agreement of the Parties and no understandings or obligations not expressly set forth in this Joint Funding Agreement are binding on the Parties.
13. All captions, title, or headings in this Joint Funding Agreement are used for reference and convenience only and do not limit, modify, or otherwise affect this Joint Funding Agreement.
14. The undersigned representative of each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Joint Funding Agreement and to legally bind the Party to it.
15. The Parties shall comply with State Executive Order No. 75-5, as amended by State Executive Order No. 2009-9, and all other applicable Federal and State laws,

rules and regulations relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

16. All books, accounts, reports, files and other records in relation to this Joint Funding Agreement shall be subject at all reasonable times to inspection and audit by the Parties throughout the term and for five years after the termination of this Joint Funding Agreement.
17. Any notice under this Joint Funding Agreement must be in writing and addressed as follows:

Arizona Department of Water Resources

Attn: Director

P.O. Box 36020

Phoenix, AZ 85067-6020

With a courtesy copy by email to _____

Central Arizona Water Conservation District

c/o General Manager

P.O. Box 43020

Phoenix, Arizona 85080-3080

With a courtesy copy by email to tcooke@cap-az.com

Any Party may change the address listed in this section by providing five days' notice to the other Parties.

18. This Joint Funding Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Agreement.

**Joint Funding Agreement between the Arizona Department of Water Resources and
the Central Arizona Water Conservation District**

ARIZONA DEPARTMENT OF WATER RESOURCES

By: _____
Thomas Buschatzke
Director

Date: _____

APPROVED AS TO FORM:

By: _____
Nicole D. Klobas
Deputy Chief Counsel

**Joint Funding Agreement between the Arizona Department of Water Resources and
the Central Arizona Water Conservation District**

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Theodore C. Cooke, D.B.A.
General Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Jay M. Johnson
General Counsel

MEMORANDUM OF UNDERSTANDING AMONG THE ARIZONA DEPARTMENT
OF WATER RESOURCES, ARIZONA WATER BANKING AUTHORITY AND
CENTRAL ARIZONA WATER CONSERVATION DISTRICT REGARDING
INVESTIGATION OF AUGMENTATION OPPORTUNITIES THROUGH A
REGIONAL RECYCLED WATER PROGRAM

This Memorandum of Understanding (“RRWP MOU”) is made and entered into this ____ day of _____, 2021 among the Arizona Department of Water Resources (“ADWR”), the Arizona Water Banking Authority (“AWBA”) and the Central Arizona Water Conservation District (“CAWCD”) for the purpose of expressing their mutual understandings and commitments to further collaboration regarding the potential development of augmented Colorado River water supplies for the firming of long-term subcontracts for municipal and industrial priority Central Arizona Project water (“long-term M&I subcontracts”) or for use by other water users in Arizona as more fully described herein, through The Metropolitan Water District of Southern California’s Regional Recycled Water Program. ADWR, CAWCD and AWBA may be referred to individually as a “Party” or collectively as the “Parties.”

BACKGROUND

- A. The director of ADWR is authorized to “[i]nvestigate works, plans or proposals pertaining to surface water” including Colorado River water and Central Arizona Project (CAP) water; “[p]rosecute and defend all rights, claims and privileges of this state respecting interstate streams;” and “negotiate and cooperate with agencies of ... any state or government and represent this state concerning matters within the department’s jurisdiction.” A.R.S. § 45-105(A)(2), (9), (10).
- B. The AWBA is required to “[c]oordinate with CAWCD for the purchase, delivery and storage of Colorado river water delivered through the central Arizona project,” and is authorized to execute agreements necessary to obtain and store water delivered through the CAP and distribute long-term storage credits accrued to make water available to municipal and industrial users of Colorado River water in Arizona. A.R.S. § 45-2423(A)(4), (B)(2), and (B)(7).
- C. CAWCD is a political subdivision of the State of Arizona established pursuant to Arizona Revised Statutes §§ 48-3701, et. seq., which operates and maintains the CAP pursuant to contracts and agreements with the United States, and delivers water to CAP contractors, subcontractors and other water users in Arizona. CAWCD is authorized to make and execute all contracts and other instruments necessary to accomplish its authorized purposes. A.R.S. § 48-3712(A)(2).

- D. Governor Ducey established the Governor's Water Augmentation, Innovation and Conservation Council. One of the goals of the Council is to investigate long-term water augmentation strategies for the State of Arizona.
- E. On August 26, 2020, ADWR and CAWCD submitted a letter to The Metropolitan Water District of Southern California ("Metropolitan") expressing their interest in participating with Metropolitan on the development of its Regional Recycled Water Program ("Program"). The Program, as currently envisioned, is planned to produce and deliver up to approximately 168,000 acre-feet per year of purified water from a new advanced water treatment facility located at the County Sanitation District No. 2 of Los Angeles County's Joint Water Pollution Control Plant in Carson, California.
- F. ADWR and CAWCD intend to enter into the Agreement to Contribute Funds for Environmental Planning Phase Services Related to the Regional Recycled Water Program with Metropolitan ("RRWP Contributed Funds Agreement"). Pursuant to the RRWP Contributed Funds Agreement, ADWR and CAWCD will contribute a combined total of the lesser of either \$6 million or 24 percent of Metropolitan's costs for conducting analyses, investigations, evaluations, studies and public outreach, as needed, to complete any environmental review and documentation required for design and construction of the Program (collectively "Environmental Planning Phase Services"). If Metropolitan approves and develops the Program, ADWR, CAWCD and Metropolitan intend to explore entering into a future development agreement to further define the responsibilities of the Parties in the development of the Program and to allocate Program water to ADWR and CAWCD or their designees ("Development Agreement").
- G. In the event CAWCD and/or ADWR do not enter into a Development Agreement with Metropolitan, CAWCD and/or ADWR will be entitled to a refund of the amount paid to Metropolitan under the RRWP Contributed Funds Agreement.
- H. If ADWR and CAWCD ultimately enter into a Development Agreement with Metropolitan which allocates Program water to ADWR, CAWCD or their designees, ADWR and CAWCD will be entitled to a credit toward any funds owed under the Development Agreement in the amount of the funds contributed by ADWR and CAWCD in the RRWP Contributed Funds Agreement.

MUTUAL UNDERSTANDINGS AND COMMITMENTS

1. The Parties anticipate that the Program may provide significant opportunities to augment the Colorado River, which could result in increased reliability and

resiliency of the Colorado River supply available to CAP long-term contracts. Such opportunities may require significant collaboration, agreements and partnerships among the Parties to implement.

2. The Parties commit to working together to enter into a Development Agreement with Metropolitan for the purposes of developing an augmented Colorado River supply. The Parties commit to working collaboratively with Metropolitan on any necessary exchange agreements or regulatory changes that may be necessary to enable the augmented supply produced through the Development Agreement to be available for use in Arizona.
3. The Parties intend that any augmented supply or credit produced through a Development Agreement with monies levied by CAWCD pursuant to A.R.S. § 48-3715.02 or with monies from the Arizona water banking fund pursuant to A.R.S. § 48-3715.03(B) would be used to firm long-term M&I subcontracts. Such firming may be accomplished through various arrangements including partnerships with the Arizona Water Banking Authority. The Parties commit to working collaboratively on any agreements, partnerships, statutory or regulatory changes needed to develop the Program water into a firming supply for long-term M&I subcontracts.
4. The Parties intend that any augmented supply or credit that may be produced through a Development Agreement with monies from ADWR may be made available to other water users in Arizona, under terms to be determined in the future.
5. Nothing in this MOU is intended to or shall be construed to limit or affect in any way the authority or legal responsibilities of any Party. Nothing in this MOU binds any participant to perform beyond their respective authorities.
6. This MOU may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one MOU.
7. Any notice under this MOU must be in writing and addressed as follows:

Arizona Department of Water Resources

Attn: Director

P.O. Box 36020

Phoenix, AZ 85067-6020

With a courtesy copy by email to tbuschatzke@azwater.gov

Arizona Water Banking Authority

Attn: Manager

P.O. Box 36020

Phoenix, AZ 85067-6020

With a courtesy copy by email to voconnell@azwater.gov

Central Arizona Water Conservation District

c/o General Manager

P.O. Box 43020

Phoenix, Arizona 85080-3080

With a courtesy copy by email to tcooke@cap-az.com

A properly addressed notice will be effective on the day of delivery, if delivered directly by a Party or by a nationally recognized delivery service, or on the third day after mailing, if sent postage prepaid by U.S. Mail. The Parties shall transmit a courtesy copy of any notice to the other Party by email on the day the notice is sent.

Any Party may change the address listed in this section by providing five days' notice to the other Parties.

Memorandum of Understanding Among the Arizona Department of Water Resources, Arizona Water Banking Authority and Central Arizona Water Conservation District Regarding Investigation of Augmentation Opportunities Through a Regional Recycled Water Program

ARIZONA DEPARTMENT OF WATER RESOURCES

By: _____
Thomas Buschatzke
Director

Date: _____

**Memorandum of Understanding Among the Arizona Department of Water
Resources, Arizona Water Banking Authority and Central Arizona Water
Conservation District Regarding Investigation of Augmentation
Opportunities Through a Regional Recycled Water Program**

ARIZONA WATER BANKING AUTHORITY

By: _____
Thomas Buschatzke
Chair

Attest: _____
[NAME]
Secretary

Date: _____

Date: _____

**Memorandum of Understanding Among the Arizona Department of Water
Resources, Arizona Water Banking Authority and Central Arizona Water
Conservation District Regarding Investigation of Augmentation
Opportunities Through a Regional Recycled Water Program**

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Theodore C. Cooke, D.B.A.
General Manager

Date: _____



Report on May 26th Arizona Reconsultation Committee Meeting & May 13th Modeling and Analysis Work Group Meeting

Ted Cooke

General Manager

Chuck Cullom

Colorado River Programs Manager

CAWCD Board Meeting

June 10, 2021

YOUR WATER. YOUR FUTURE.



**ARIZONA
RECONSULTATION
COMMITTEE**

Arizona Reconsultation Committee Meeting 3

May 26, 2021

ARC #3 - Meeting Agenda

- Welcome and Introductions
- Colorado River Update
- Review of 2020 and 2021 Tier 0 Operations
- Preparations for 2022 Tier 1 Operations
- Report on the Modeling and Analysis Work Group Efforts
- Report on the Arizona Strategy Team
- Update on Federal and Basin States Processes
- Next Steps
- Call to the Public

3



MAWG Meeting #5 - MAWG Initial Conditions Scenarios Exercise

- MAWG Members completed an initial conditions scenarios selection exercise on May 13, 2021
- The Members submitted a pre-meeting exercise which was used to generate six "themes"
- From there, the Members selected model input components for those themes, defining six unique initial conditions scenarios
- ADWR-CAWCD staff have reviewed and refined one of the scenarios to reflect input from MAWG members

4



MAWG Scenario Development Feedback

- Suggestion for sensitivity analysis for drier conditions/higher uses – high impact scenario
- Members also suggested continued exploration of alternative CO River hydrology scenarios
- Some requested information on hydropower impacts
- Some provided suggestions for post-processing analysis to explore trends in the model/data

These Initial Conditions Scenario are preliminary examinations and do not represent Arizona's positions on model assumptions or the appropriateness of any model variable



ARIZONA
RECONSULTATION
COMMITTEE

5

Initial Conditions Scenario Refinements

Initial Colorado River operating rules consistent with BOR's Jan. '21 CRSS version
EXCEPT ADWR-CAWCD will explore an appropriate "Equalization Line"

| Scenario Theme | 1 | | 2 | | 3 | |
|--------------------|--|------------------------------------|--|-------------------------|--|------------------------------------|
| Hydrology | Drier and increased temperatures | Stress Test | Wetter conditions | Paleo-Conditioned | Median hydrology (in-between wet and dry) | Pluvial-removed |
| UB Demand | UB M&I Conservation (Low use) | Guidelines Period UB Uses Extended | High end of future UB use | 2016 UCRC UB Growth | UB growth based on recent trends (Low use) | Guidelines Period UB Uses Extended |
| AZ On-River Demand | Increased ag CU due to dry conditions | AZ On-River 0.1% Growth | Growth of on-river communities and tribal areas | AZ On-River 0.2% Growth | Conversion of on-river ag use to on-river M&I use | AZ On-River 0.1% Growth |
| CAP Utilization | CAP Contract allocation and utilization (slow/medium/fast) | Medium CAP Growth | CAP Contract allocation and utilization (slow/medium/fast) | Medium CAP Growth | CAP Contract allocation and utilization (slow/medium/fast) | Medium CAP Growth |

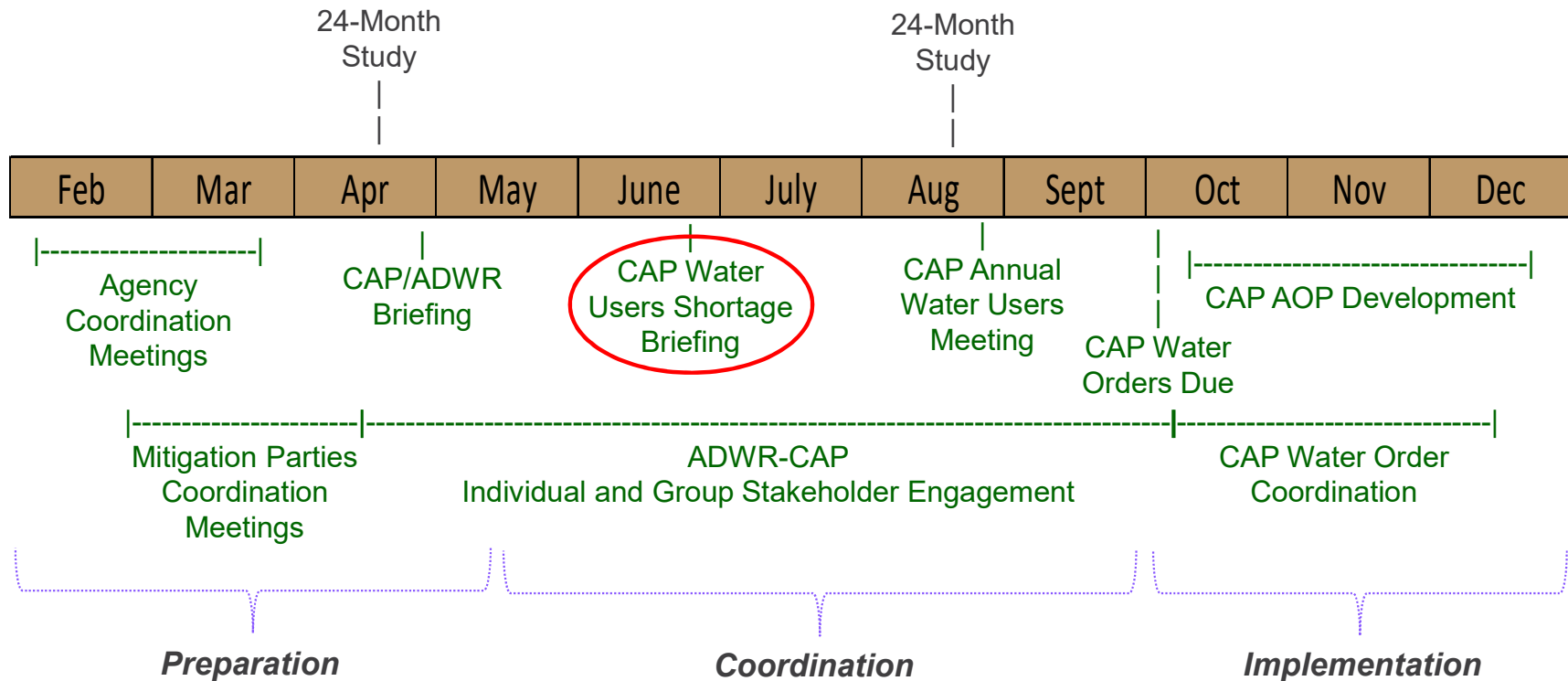
| Scenario Theme | 4 | | 5 | | High Impact | |
|--------------------|--|---------------------|--|------------------------------------|--|--|
| Hydrology | Future effects of climate variability | Downscaled-GCM | Drier and increased temperatures | Pluvial-removed | Drier conditions | Stress Test |
| UB Demand | Decrease in tributary streamflow for ag diversion (Intermediate UB demand) | 2016 UCRC UB Growth | UB growth based on recent trends (Low use) | UB Guidelines Period Average | Higher UB demands | 2012 Basin Study Current Trends Growth |
| AZ On-River Demand | Increase in demands/ag CU due to climate change | 0.2% Growth | Conversion of on-river ag use to on-river M&I use | On-River Guidelines Period Average | Higher Az On-River demands | AZ On-River 0.2% Growth |
| CAP Utilization | CAP Contract allocation and utilization (slow/medium/fast) | Fast CAP Growth | CAP Contract allocation and utilization (slow/medium/fast) | Medium CAP Growth | Fast CAP Contract allocation and utilization | Fast CAP Growth |



**Thank You
Any Questions**

YOUR WATER. YOUR FUTURE.

Preparation for Potential 2022 Shortage: Arizona's 2021 Activities



The items scheduled to be on the consent agenda at the August 5, 2021 meeting are:

NEW ITEMS:

Equipment Purchase Contract for West Plant Discharge Valves – Francom

The third and final phase of the West Plant Discharge Valve Replacement project provides the final fourteen (14) valves for at BSH, LHQ and HSY, sizes vary at 48", 66" and 90". Installation is performed internally by CAP staff during planned outages, and will be completed over a four-year period. The valves will be delivered sequentially over three years, 2022-2024.

Construction Contract for Fabrication and Installation of Cofferdams – Francom

CAWCD has solicited services from a job order contractor to perform preliminary fabrication and testing of several coffer dam designs, testing and developing the best system for CAP. The project team including designer, contractor and CAP staff have developed a trial program to test different options for joint sealing, installation, and anchorage. Information from this trial will guide construction of the complete coffer dam system for the south portion of canal. A similar second phase will occur in 2022 for the west portion.

Technical Services Contract for Water Quality Model Selection – Francom

CAWCD is soliciting proposals for technical services to assist in the selection and implementation of a water quality model as described in the Water Quality Guidance Document. The Consultant will aid in reviewing historical water quality information, provide CAWCD with a list of water quality models that meet the Requirements List (developed by CAWCD), configure and implement selected water quality model, solicit peer review, provide technical responses, conduct presentations and workshops to CAWCD staff (as needed), and submit final technical reports as required by CAWCD staff.

Revocation of Member Service Area Agreement Between CAWCD and Metropolitan Domestic Water Improvement District – Grignano

In August, the Board will be asked to approve the Revocation of Member Service Area Agreement between CAWCD and Metropolitan Domestic Water Improvement District (Metro DWID) for its Metro Main Service Area located in the Tucson AMA. Metro Main recently received its new Designation of Assured Water Supply (DAWS) Decision and Order from ADWR which shows no current or future reliance on CAGRD. As permitted by Arizona Revised Statutes ARS §48-3780(B), the Municipal Provider desires to terminate the service area's Member Service Area status. Metro Main has been a CAGRD Member Service Area since December 1995. Metro Main is the third Member Service Area to de-enroll from the CAGRD. The Santa Rosa Water Company was the first to de-enrollment in 2004 and the City of Peoria was the second to de-enroll in 2011.