SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

WATER RIGHTS SETTLEMENT AGREEMENT

PHOENIX, ARIZONA

FEBRUARY, 1988

AGREEMENT

THIS AGREEMENT, dated as of February 12, 1988, is entered into among the United States of America; the State of Arizona; the Salt River Pima-Maricopa Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District.

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"3.c" United States of America on behalf of Salt River Pima-Maricopa Indian Community, et al. v. City of Phoenix, et al., CIV 82-2173-PHX WPC

"3.d" Town of Gilbert v. The Roosevelt Water Conservation District, et al., CIV 85-2600-PHX CAM

"3.e" Gila River Adjudication

"3.f" Salt River Pima-Maricopa Indian Community v. The State of Arizona and Gene Hassell, Acting Commissioner of the Arizona State Land Department, No. CIV 79-185 PHX

"3.g." Salt River Pima-Maricopa Indian Community v. Salt River Valley Water Users' Association, et al., No. CIV 83-2500 PHX WPC (Exhibit not executed due to dismissal of litigation)

EXHIBITS

"3.h.1"	River Water Exchange Contract - City of Chandler, Arizona
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EXHIBITS

"3.m.7"	City of Gilbert - SRPMIC Project Water Lease Agreement
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1.0 RECITALS

1.1 The continued development of the Salt River Valley, being dependent upon reliable allocation of Arizona's water resources, has been jeopardized by the assertion of substantial water right claims based upon Federal, State and other law. These include claims by the Salt River Pima-Maricopa Indian Community and its members to a Tribal homeland water right sufficient to irrigate approximately 27,200 acres on the Salt River Pima-Maricopa Indian Community's Reservation east of Scottsdale. In addition, the validity of certain non-Indian claims to water and the liability of the United States and other water users to the Salt River Pima-Maricopa Indian Community have been raised. These issues are the subject of extensive and complex litigation pending in the Arizona State and Federal courts.

1.2 It is acknowledged by all parties to this Agreement that the resolution of these conflicts must recognize long-standing vested water rights arising under Federal law, State law, the Kent Decree, and through contractual relationships with the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District and the United States. Settlement of these issues must also accommodate the imperative need of the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Town of Gilbert to satisfy increasing municipal and industrial ("M&I") water demands.

1.3 The representatives of the United States of America, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power

District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe and the Town of Gilbert, Arizona, and the Central Arizona Water Conservation District have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members, to finally resolve pending litigation on water rights and damage claims, and to seek funding for implementation of the settlement.

1.4 It is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation.

1.5 The objective of this settlement is to resolve all outstanding water-related litigation and to settle, once and for always, the water rights of the Salt River Pima-Maricopa Indian Community, its members, and the owners of allotted lands within the Salt River Pima-Maricopa Indian Community's Reservation based upon Federal, State and other laws by providing to the Salt River Pima-Maricopa Indian Community sufficient water from various sources to irrigate 27,200 acres of agricultural land within the Salt River Pima-Maricopa Indian Community's Reservation, 14,500 acres of which are located south of the Arizona Canal and within the exterior boundaries of the Salt River Reservoir District and 12,700 acres of which are located north of the Arizona Canal and outside the exterior boundaries of the Salt River Reservoir District; provided, however, that the claims of allottees and the Salt River Pima-Maricopa Indian . . .

Community for damages against the United States in the United States Claims Court are not resolved by this settlement.

NOW, THEREFORE, in consideration of the premises and of the promises and agreements hereinafter set forth, the parties hereto agree as follows:

2.0 DEFINITIONS

This Agreement will employ abbreviated terms which will have the meanings stated below.

2.1 "Additional Active Conservation Capacity" shall mean the difference between the Existing Active Conservation Capacity in Roosevelt Reservoir prior to modification of Roosevelt Dam and the Active Conservation Capacity after modification of Roosevelt Dam; "Active Conservation Capacity" shall mean the reservoir capacity assigned to regulate reservoir outflow for irrigation, power and M&I use. The modifications referred to in this definition are the modifications made as a part of Plan 6.

2.2 "Allottees" shall mean owners of allotted land within the Salt River Pima-Maricopa Indian Community Reservation.

2.3 "Bartlett Dam Agreement" shall mean the agreement between the United States and the Salt River Valley Water Users' Association dated June 3, 1935, relating to Verde River storage works.

2.4 "CAP" shall mean the Central Arizona Project, a reclamation project constructed by the United States of America pursuant to the Colorado River Basin Project Act of September 30, 1968, 82 Stat. 885, as amended.

2.5 "CAP Master Repayment Contract" shall mean the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 15, 1972 (Contract No. 14-06-W-245), and any amendment or revision thereof.

2.6 "CAWCD" shall mean the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, which is the Contractor under the CAP Master Repayment Contract.

2.7 "Effluent" shall mean water which, after being withdrawn as groundwater or diverted as surface water, has been used for domestic, municipal or industrial purposes and which is available for reuse for any purpose, whether or not the water has been treated to improve its quality.

2.8 "Gila River Adjudication" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled as IN RE the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro).

2.9 "Horseshoe Dam Agreement" shall mean the contract between the Salt River Valley Water Users' Association, Phelps Dodge Corporation, and Defense Plant Corporation dated March 1, 1944.

2.10 "Kent Decree" shall mean the decree dated March 1, 1910, entered in Patrick T. Hurley v. Charles F. Abbott, et al., Cause No. 4564, in the District Court of

the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

2.11 "Plan 6" shall mean Plan 6 for the Regulatory Storage Division of the CAP which for the purposes of this Agreement is limited to modifications to Roosevelt Dam on the Salt River.

2.12 "Plan 6 Agreement" shall mean the agreement among the United States; the CAWCD; the Flood Control District of Maricopa County; the Salt River Project; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, the State of Arizona; and the City of Tucson, for funding of Plan 6 facilities of the CAP, and for other purposes, dated on April 15, 1986, and any amendments or supplements thereto.

2.13 "RID" shall mean the Roosevelt Irrigation District, an irrigation district organized under the laws of the State of Arizona.

2.14 "RWCD" shall mean the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

2.15 "Secretary" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative.

2.16 "SRP" shall mean the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

2.17 "SRPMIC" shall mean the Salt River Pima-Maricopa Indian Community, a community of Pima and Maricopa Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987, and duly recognized by the Secretary.

2.18 "SRPMIC Reservation" shall mean that area of land generally shown on the map attached as Exhibit "2.17" to this Agreement.

2.19 "SRRD" shall mean the Salt River Reservoir District as defined , on the effective date of this Agreement, in Article IV, Section 3, of the Articles of Incorporation of the Salt River Valley Water Users' Association.

3.0 STIPULATIONS AND AGREEMENTS

This Agreement includes additional and subsidiary agreements in the form of contracts, stipulations for settlement of litigation and the entry of consent decrees and waivers of claims as exhibits which are attached and incorporated herein and are described as follows:

(a) Salt River Pima-Maricopa Indian Community v. United States, et al., CIV 82-745 PHX RGS, United States District Court for the District of Arizona: Stipulation for Dismissal with Prejudice and Order of Dismissal with Prejudice (Exhibit "3.a");

(b) Salt River Pima-Maricopa Indian Community v. H.S. Aguilar, et al., CIV 82-2162 PHX PGR, United States District Court for the District of Arizona: Notice of Dismissal with Prejudice and Motion and Notice for Order of Dismissal and Order of Dismissal with Prejudice (Exhibit "3.b");

(c) United States of America on behalf of Salt River Pima-Maricopa Indian Community, et al. v. City of Phoenix, et al., CIV 82-2173-PHX WPC: Notice of Dismissal with Prejudice (Exhibit "3.c");

(d) Town of Gilbert v. The Roosevelt Water Conservation District, et al., CIV 85-2600-PHX CAM: Stipulation and Joint Motion for Joinder of Additional Parties Plaintiff, Waiver of Amended Complaint and Time Within Which to Answer, Incorporation of Prior Answers to the Complaint and Order; Order; Stipulation for Dismissal with Prejudice; and Order of Dismissal (Exhibit "3.d");

(e) Gila River Adjudication: Stipulation and Judgment (Exhibit "3.e");

(f) Salt River Pima-Maricopa Indian Community v. The State of Arizona and Gene Hassell, Acting Commissioner of the Arizona State Land Department, No. CIV 79-185 PHX: Stipulation for Dismissal with Prejudice and Order of Dismissal with Prejudice (Exhibit "3.f");

(g) Salt River Pima-Maricopa Indian Community v. Salt River Valley Water Users' Association, et al., No. CIV 83-2500 PHX WPC (the Exhibit is not executed because the suit has been dismissed) (Exhibit "3.g");

(h) City river water exchange contracts with the Secretary for delivery of water as provided in Paragraph 12.0 hereof (Exhibits "3.h.1 through 3.h.7");

(i) Amendment of RWCD CAP agricultural water service subcontract, and Superior Court decree validating such agricultural water service subcontract (Exhibit "3.i");

(j) Amendment of SRPMIC CAP water delivery contract to effectuate the Project Water Lease Agreements pursuant to Paragraph 19.0 hereof (Exhibit "3.j");

(k) RID, City of Phoenix, SRP and SRPMIC Water Exchange Agreement pursuant to Paragraph 11.0 hereof (Exhibit "3.k");

(l) Approval of storage and funding related to Plan 6 pursuant to Paragraph 7.0 hereof (Exhibit "3.1");

(m) Project Water Lease Agreements pursuant to Paragraph 19.0 hereof (Exhibits "3.m.1" through "3.m.7");

(n) SRP-RWCD extension agreement (Exhibit "3.n");

(o) Waiver and release of claims pursuant to Paragraph 17.0 hereof (Exhibit "3.o");

(p) Amendment to Bartlett Dam Agreement pursuant to Paragraph 9.0 hereof (Exhibit "3.p"); and

(q) The Assignment described in Paragraph 12.3 hereof (Exhibit "12.3").

4.0 ANNUAL WATER DUTY, CONSUMPTIVE USE, AND EXPECTED GROUNDWATER RECHARGE

The SRPMIC Reservation land to be irrigated with the water provided by this Agreement will be served with new, modern delivery facilities. Accordingly, a reduced water duty of 4.5 acre-feet per acre per year will be used for purposes of this Agreement. For purposes of calculating the safe yield groundwater withdrawal, the crop consumptive use will be 3.1 acre-feet per acre per year, and approximately 0.2 acre-feet per acre per year is assumed to be lost to future use by unrecoverable percolation. The safe yield groundwater withdrawal resulting from agricultural recharge is set at 1.2 acre-feet per acre per year or 32,640 acre-feet per year when full agricultural development occurs, and will remain fixed for the term of this Agreement.

5.0 TOTAL WATER REQUIREMENT AND LIMITATION

Utilizing a water duty of 4.5 acre-feet per acre per year for the 14,500 acres located within the exterior boundaries of the SRRD and for the 12,700

acres located north of the Arizona Canal, the annual water delivery requirement to SRPMIC measured at the turnouts from the CAP Granite Reef Aqueduct, turnouts from SRP main canals, and pump outlets from groundwater wells on the SRPMIC Reservation will be 65,250 acre-feet per year for the SRPMIC Reservation lands within the exterior boundaries of the SRRD and 57,150 acre-feet per year for the SRPMIC Reservation lands north of the Arizona Canal. With the exception of "Spill Water" described in Paragraph 14.0 hereof, the SRPMIC total annual water deliveries from all sources, including groundwater, shall be limited to 65,250 acre-feet south of the Arizona Canal and 57,150 acre-feet north of the Arizona Canal.

6.0 SOURCES OF WATER

Water for the settlement will be provided from the sources and in the quantities outlined in Tables 6.1 and 6.2 hereof and defined in Paragraphs 7.0, 8.0, 9.0, 10.0, 11.0, 12.0 and 13.0 hereof.

6.1 For irrigation or other use on 14,500 acres of SRPMIC Reservation lands located south of the Arizona Canal and within the exterior boundaries of the SRRD:

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Source	Estimated Quantity (AF/yr)	Reference Paragraph
Kent Decree water	18,776	7. 0
Stored water from SRP	9,074	8. 0
Cities' river water exchange	20,000	12. 0
Groundwater pumped by SRPMIC (long term average)	17,400	13. 0
Sub-Total	65,250	

6.2 For irrigation or other use on SRPMIC Reservation lands located north or south of the Arizona Canal:

Source	Estimated Quantity (AF/yr)	Reference Paragraph
CAP contractual entitlement	13,300	19.0
Bartlett Dam Agreement water	20,000	9.0
RWCD	8,000	10.0
RID, City of Phoenix, SRP exchange water	10,000	11.0
Groundwater pumped by SRPMIC (long term average)	5,850	13.0
Sub-Total	57,150	
TOTAL	122,400	

6.3 Effluent developed on the SRPMIC Reservation shall be used for such purposes as SRPMIC may determine and shall not be included in the quantity restriction of this Agreement.

6.4 Except for SRPMIC's CAP contractual entitlement, the priority of the water delivered to SRPMIC from the sources listed in Paragraphs 6.1 and 6.2 hereof shall be the priority of those sources as determined in the Gila River Adjudication.

7.0 KENT DECREE WATER

7.1 Historically, SRPMIC has used only a part of its Kent Decree entitlement to the normal flow of the Salt and Verde Rivers due to demand being less than available supply during parts of the year. SRPMIC is unable to store surplus portions of its normal flow entitlements for future use. In order that SRPMIC may use more fully its Kent Decree water entitlement, the United States will designate for use by SRPMIC for storage of Kent Decree water 7,000 acre-feet (hereinafter "Designated Space") of the Additional Active Conservation Capacity. The SRPMIC will be assessed evaporation losses using the same formula as arrived at under Plan 6 for the Plan 6 participants as provided in Paragraph 5.26(b) of Exhibit "C" of the Plan 6 Agreement, with the participation of SRPMIC. In order to assure that Additional Active Conservation Capacity is available to SRPMIC, the Secretary agrees that each annual budget estimate submitted to the Executive Office of the President of the United States by the Department of the Interior shall include sufficient funding, in accordance with the Plan 6 Agreement as amended or modified. SRPMIC agrees to support the authorization for funding and modification of Roosevelt Dam as an integral part of the Plan 6 facilities.

7.2 The Designated Space will be for seasonal re-regulation only (no annual carry over past October 1) and will be made available to accomplish other Plan 6 purposes when not needed to re-regulate SRPMIC's Kent Decree entitlement. No part of the Plan 6 or SRP water supply will accrue to the United States or the SRPMIC under this Paragraph 7.0. The costs of the Designated Space shall be

non-reimbursable, and the United States will forgive a portion of the non-Federal funding obligation associated with the Designated Space. The amount of the costs so forgiven will be the ratio of number of acre-feet of Designated Space to the Additional Active Conservation Capacity multiplied by the amount the cities referred to in the Plan 6 Agreement have agreed to contribute for that capacity under the Plan 6 Agreement.

7.3 Chandler, Glendale, Mesa, Phoenix, Scottsdale, Tempe, the United States, CAWCD, and SRP will cooperate with SRPMIC in obtaining any necessary State or Federal approval for joint use of the Designated Space or existing temporary space in SRP reservoirs consistent with this Paragraph 7.0. All parties to this Agreement shall refrain from initiating or supporting any legislative, administrative, or judicial proceeding challenging Plan 6. The Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, the United States, CAWCD, and SRP agree that to the extent the provisions of Paragraphs 7.1, 7.2, and 7.3 hereof are contrary to the provisions of the Plan 6 Agreement, Paragraphs 7.1 through 7.3 hereof shall control.

7.4 SRP will provide temporary storage for the 7,000 acre-feet referred to in Paragraph 7.1 hereof in its existing reservoirs on the Salt River for SRPMIC Kent Decree water until the earlier of:

(a) the construction of Additional Active Conservation Capacity is completed;

(b) a declaration is made by the United States that such Capacity will not be constructed; or

(c) December 31, 2005;

Provided, however, that this temporary storage entitlement shall always be subject to spill as provided in Paragraph 21.9 hereof and that evaporation will be charged monthly at the rate of one-half of one percent of the Kent Decree stored water balance at the end of each month. The temporary storage will be for seasonal re-regulation only (no annual carry over past October 1).

7.5 In the event of the occurrence of either condition described in Paragraph 7.4(b) or 7.4(c) hereof, and to satisfy the requirements of Paragraph 7.1 hereof, the United States will provide water from sources other than the Salt or Verde Rivers at no cost or expense to SRPMIC and at no cost or expense to the non-federal parties to the Plan 6 Agreement. The expenditure or advance of money, the performance of any work, or the supply of substitute water by the United States under this Paragraph 7.5 which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made.

7.6 The Kent Decree water will be used only on SRPMIC Reservation lands south of the Arizona Canal and inside the exterior boundary of the SRRD.

8.0 ADDITIONAL STORED WATER

8.1 "Stored Water" is defined as that amount of water delivered to SRPMIC by SRP from SRP reservoirs up to 9,074 acre-feet per year pursuant to Paragraphs 6.1 and 8.2 hereof.

. . .

"Additional Stored Water" is defined as that amount of SRP water delivered to SRPMIC by SRP from SRP reservoirs in excess of 9,074 acre-feet per year pursuant to Paragraphs 8.2 through 8.7 hereof.

"Net SRP Reservoir Storage" on Exhibit "8.1" to this Agreement is defined as (a) water actually stored in SRP reservoirs (existing as of the date of this Agreement) on May 1st of each year less water stored for SRPMIC, the Fort McDowell Mohave-Apache Indian Community, RWCD, Phelps Dodge Corporation, City of Phoenix, Buckeye Irrigation District and storage related to Plan 6; and (b) the sum of surface water released from existing SRP reservoirs during the 12 months preceding May 1 which is (i) diverted by SRP under SRP's rights as determined in the Gila River Adjudication for use on lands not receiving such waters prior to the date of this Agreement, (ii) delivered pursuant to a contract, other than those deliveries permitted pursuant to the Plan 6 Agreement, this Agreement, or a Fort McDowell Indian Community settlement agreement, by SRP outside the boundaries of the SRRD in excess of the maximum deliveries required under current contract arrangements with SRP as of February 12, 1988, and any renewals thereof; and (iii) water, other than Spill Water as defined in Paragraph 14.0 hereof and water available to SRPMIC under Paragraph 6.0 of this Agreement, diverted from existing SRP conservation space and first used for a groundwater recharge or storage facility operated pursuant to permits for those purposes under State law, in excess of replacement of that water in the SRP reservoirs. "Net SRP Reservoir Storage" shall not include SRP surface water released from existing SRP reservoirs or removed upstream from such reservoirs during the 12 months preceding May 1, which is delivered or diverted for use outside the SRRD so long as such deliveries or diversions are in exchange on at least an acre-foot for acre-foot basis for other water delivered to SRP for use on its

shareholders' lands within the SRRD. Deliveries of surface water from the Salt and Verde Rivers to the Gila River Indian Community by SRP during the 12 months preceding May 1, pursuant to a written settlement agreement, may be used by SRPMIC to increase the level of SRP Net Reservoir Storage on May 1 to a maximum level of 1.5 million acre-feet. Net SRP Reservoir Storage will not exceed SRP's rights, as determined in the Gila River Adjudication, for SRP storage facilities existing as of the date of this Agreement.

Stored Water and Additional Stored Water will be used only on SRPMIC Reservation lands south of the Arizona Canal within the exterior boundaries of SRRD.

8.2 SRPMIC will be delivered annually Stored Water from 0 to 9,074 acre-feet at Net SRP Reservoir Storage levels on May 1 of 350,000 to 1.5 million acre-feet in accordance with Exhibit "8.1" hereof. At Net SRP Reservoir Storage levels above 1.5 million acre-feet on May 1, SRPMIC shall be entitled to receive Additional Stored Water in accordance with Exhibit "8.1" hereof and conditioned as provided in Paragraphs 8.3 through 8.7 hereof. Maximum demands on SRP by SRPMIC for Stored Water will be no more than 658 acre-feet in 1987 and will increase on a straight line basis to 9,074 acre-feet by the year 2000. The first delivery of such water will be made, on the order of SRPMIC, during the calendar year in which this Agreement becomes enforceable, and shall be of an amount that reflects the phase-in of entitlement under this Paragraph 8.2. The water year under this Paragraph 8.0 shall be May 1 through the following April 30.

8.3 As conditions to receiving Additional Stored Water SRPMIC shall:

8.3.1 Establish by May 1 of each year that it will reduce groundwater

pumping on its lands south of the Arizona Canal and within the exterior boundaries of the SRRD to not more than 17,400 acre-feet on an annualized basis from May 1 of that year through April 30 of the next year and that it shall thereafter further reduce its actual groundwater pumping on the SRPMIC Reservation by one acre-foot for each acre-foot of Additional Stored Water it receives from SRP.

8.3.2 Designate on or before May 1 of each year the specifically described acres within the SRPMIC Reservation which will actually be served during the subsequent 12 months with water from all sources. The designation shall be in the form of a map depicting the acres, the projected source of irrigation water for those acres, and a tabulation distinguishing acres north and south of the Arizona Canal. The designation shall be certified by a resolution of the SRPMIC Council which will further certify that SRPMIC groundwater pumping for the designated acres will be reduced by one acre-foot for each acre-foot of Additional Stored Water it receives.

8.3.3 Maintain measuring devices which will permit SRP to verify the acre-feet of groundwater pumped and surface water received by SRPMIC during the previous May 1 through April 30 period and will provide this data to SRP as a part of the certifying resolution of its Council.

8.4 The allocation of Additional Stored Water which may be received by SRPMIC from SRP for the 12-month period May 1 through April 30 of each year will be the lesser of:

. . .

(a) the amount of Additional Stored Water derived from Net SRP Reservoir Storage as provided in Paragraph 8.2 hereof; or,

(b) the irrigation water demand which cannot be satisfied by using all surface water sources identified in Paragraphs 6.1 and 6.2 hereof, except for SRPMIC CAP water, for which groundwater would be pumped to satisfy that demand if Additional Stored Water were not available. Demand is defined as designated acres, as provided in Paragraph 8.3.2 hereof, multiplied by 4.5 acre-feet per acre.

8.5 In the event that the amount of groundwater pumped on the SRPMIC Reservation is not reduced as required by this Paragraph 8.0 or the acres designated by SRPMIC are not actually served with irrigation water, the next future Additional Stored Water allocations provided to SRPMIC under Paragraph 8.2 hereof will be reduced by a like amount. Failure by SRPMIC to designate the acres pursuant to Paragraph 8.3 hereof and to provide the SRPMIC Council resolution to SRP by May 1 of any year shall relieve SRP of any obligation to provide SRPMIC with Additional Stored Water for the next 12 month period.

8.6 In the event SRPMIC constructs water treatment plants on the SRPMIC Reservation capable of treating surface water for municipal and industrial (M&I) delivery within the SRRD on the SRPMIC Reservation, the acre-foot for acre-foot reduction of groundwater use in exchange for Additional Stored Water as provided in Paragraphs 8.2 and 8.3.1 hereof may result from reduced groundwater pumping for M&I use on the SRPMIC Reservation, rather than from reduced pumping for agricultural irrigation. The limits set forth in Paragraph 8.4 hereof on total Additional Stored Water available to the SRPMIC shall not be affected by a

change in groundwater use within the SRPMIC Reservation decreasing agricultural irrigation use and increasing M&I use.

8.7 For the purposes of this Agreement, "Additional Allotment" as described on Exhibit "8.1" hereof at any given Net SRP Reservoir Storage amount will be multiplied by 11,042 acres to determine the Stored Water and Additional Stored Water available to SRPMIC, subject to the above provisions.

9.0 BARTLETT DAM WATER

9.1 The Bartlett Dam Agreement shall be amended to provide that SRP shall increase the total SRPMIC allotment of developed water under the Bartlett Dam Agreement to 20,000 acre-feet on December 31 of any calendar year in which all of the following three conditions occur:

9.1.1 For at least 292 days of the calendar year the total water stored in SRP reservoirs on the Verde River is more than the storage capacity of Bartlett Dam Reservoir, which, for purposes of this Agreement, is deemed to be 178,186 acre-feet, as periodically adjusted by SRP for silt losses;

9.1.2 The total SRPMIC allotment of developed water under the Bartlett Dam Agreement generated during the calendar year is less than 7,000 acre-feet;

9.1.3 The total SRPMIC allotment of developed water under the Bartlett Dam Agreement existing at the end of the calendar year is less than 20,000 acre-feet.

9.2 Article 4 of the Bartlett Dam Agreement shall be deleted and replaced with the following language:

ARTICLE 4
OPERATION OF STORAGE WORKS

> The works constructed on Verde River shall be operated and maintained by the Association. The Association may at any time store any part or all of Flow of Verde River in the reservoir, and may at any time release any quantity of water from the reservoir or it may permit the river to flow through the reservoir without regulation.

9.3 A new Article 15 shall be added to the Bartlett Dam Agreement, providing as follows:

> Except for claims arising after the effective date of this Amendment to enforce the Bartlett Dam Agreement as amended, the United States waives all claims which the United States may have, in its own right or on behalf of SRPMIC, against any person based upon
>
> (A) water rights or injuries to water rights of SRPMIC, its members or allottees under the Bartlett Dam Agreement; or
>
> (B) water rights or injuries to water rights held by the United States on behalf of SRPMIC, its members or allottees under the Bartlett Dam Agreement.

9.4 Except as provided in Paragraphs 9.1, 9.2, and 9.3 hereof, all terms and conditions of the Bartlett and Horseshoe Dam Agreements shall remain unchanged and in full force and effect.

9.5 SRP shall provide monthly reports to SRPMIC showing the balance of SRPMIC's allotment of developed water as of the end of each month.

10.0 RWCD RIGHTS AND WATER TRANSFER TO SRPMIC

10.1 (a) The parties to this Agreement ratify, confirm and declare to be valid that agreement between SRP and RWCD dated October 24, 1924, and approved by the Secretary on December 2, 1924, and all amendments and modifications thereto.

(b) The parties to this Agreement, except for the United States acting as trustee for Indian tribes other than SRPMIC, recognize and confirm the entitlement of RWCD to surface water from the Salt and Verde Rivers and agree not to object to, dispute or challenge, in the Gila River Adjudication, or otherwise, such rights, which rights are evidenced by, described, stated, confirmed or established in the following documents and instruments: the agreement between SRP and RWCD dated October 24, 1924, and approved by the Secretary on December 2, 1924; the stipulation dated September 18, 1940, the decision dated on or about September 18, 1940, the judgment dated September 19, 1940, and the order dated September 19, 1940, in W.C. Lehane v. Salt River Valley Water Users' Association, et al., Cause No. 32021-C in the Superior Court of Maricopa County, Arizona; and the agreement between SRP and RWCD dated September 9, 1954.

10.2 The parties to this Agreement, except for the United States acting as trustee for Indian tribes other than SRPMIC, recognize and confirm that the measure of RWCD's surface water entitlement under the documents and instruments identified in Paragraph 10.1 hereof is five and six-tenths percent (5.6%) of the sum of all surface water , except Spill Water, diverted at Granite Reef Dam or other points on the Salt and Verde Rivers (a) for use on the lands within the SRRD described in Exhibit "10.2" to this Agreement, (b) for distribution by

Glendale, Mesa, Phoenix and Tempe, or other cities, or their successors, to the lands within the SRRD listed on Exhibit "10.2" to this Agreement, and (c) all surface water delivered to SRP below Granite Reef Dam for use on the lands within the SRRD listed on Exhibit "10.2" to this Agreement in exchange for surface water which otherwise would have been diverted at Granite Reef Dam; minus the first 19,427 acre-feet of surface water delivered by SRP each year to the City of Phoenix domestic water treatment plants. Except as provided in this Paragraph 10.2, all rights and obligations contained in the documents and instruments referred to in Paragraph 10.1 hereof shall remain in full force and effect. RWCD's entitlement as set forth in this paragraph shall not include any yield from Additional Active Conservation Capacity.

10.3 RWCD has executed a CAP agricultural water service subcontract which provides for the conversion of CAP agricultural water to CAP M&I water under circumstances stated in the subcontract. The parties agree that this right of conversion shall not be exercised within the areas jointly within RWCD and the CAP planning areas of Chandler, Gilbert or Mesa, as used by the Arizona Department of Water Resources ("DWR") in recommending to the Secretary the initial M&I water allocations to those Cities. A map for Chandler, Mesa, and Gilbert depicting each such CAP planning area is attached to this Agreement as Exhibit "10.3." Provided, however, such conversion right may be exercised within such CAP planning area at any time or times after it is determined by the Secretary that any portion of surface water appurtenant to the land within such CAP planning area is permanently unavailable for use on such land, to the extent permitted by the following formula:

. . .

For a given acre, conversion = 1 acre-foot per acre minus (A plus B).

A = the average amount of surface water (after the permanent unavailability of surface water has been determined pursuant to RWCD's agricultural water service subcontract) actually available to each of RWCD's eligible acres not including Spill Water and surface water RWCD has agreed to contribute to this Settlement (expressed in acre-feet per acre).

B* = the amount of CAP M&I water available to an RWCD eligible acre by virtue of the initial M&I allocations to Chandler, Gilbert, or Mesa , plus the amount of permanently available replacement surface water per acre, if any, received by Chandler, Gilbert or Mesa from any water settlement involving the Fort McDowell Indian Community ("FMIC"). B = C/D (expressed in acre- feet per acre).

C = the initial CAP M&I allocation for the applicable city or town, plus the amount of permanently available replacement surface water, if any, received by Chandler, Gilbert or Mesa from any water settlement involving FMIC (expressed in acre-feet).

D = the number of acres within the CAP planning area used by DWR in recommending to the Secretary the initial M&I allocation to the applicable city or town (expressed in acres).

*Note: B must be determined with reference to the allocation of the city or town associated with the planning area wherein conversion is proposed to occur. B will not be the same number for each acre within RWCD.

For the purpose of the foregoing formula, "permanently available" shall mean the availability of such replacement surface water for a term of years or an extended term of years of substantially the same length as the term of the Project Water Lease Agreements described in Paragraph 19.0 hereof. Water received by

the Cities of Chandler and Mesa and by the Town of Gilbert pursuant to Paragraphs 12.0 and 19.0 hereof shall not be considered to be "permanently available" for purposes of the foregoing formula.

The parties agree that with respect to that area within the boundaries of RWCD but outside of the CAP planning areas used by DWR in recommending to the Secretary the initial M&I allocations for Chandler, Gilbert, and Mesa, which area is shown on Exhibit "10.3" hereto, CAP agricultural water may be converted to CAP M&I use to the extent permitted by the following formula:

For a given acre, conversion = 1 acre-foot per acre minus A (as defined above)

The Secretary shall revise the subcontract of the RWCD for agricultural water service from the CAP to include an addendum substantially in the form of Exhibit "3.i" to this Agreement, which Exhibit "3.i" is erroneously referred to in the Act as Exhibit "3.1", and shall execute the subcontract as revised. Notwithstanding any other provision or law, the Secretary shall approve the conversions of agricultural water to M & I uses authorized by the addendum at such time or times as the conditions authorizing such conversion, as set forth in the addendum, are found to exist.

10.4 The Cities of Chandler and Mesa hereby consent to become parties to that lawsuit styled as Town of Gilbert v. The Roosevelt Water Conservation District, et al., pending in United States District Court as Cause No. CIV-85-2600-PHX-CAM. The parties to this Agreement hereby approve the RWCD CAP agricultural water service subcontract, as modified by this Agreement; all parties to this Agreement who are also parties to Cause No. CIV-85-2600-PHX-CAM agree to execute

the documents which constitute Exhibit "3.d" to this Agreement requiring their signature and to take all such steps as are necessary to cause Cause No. CIV-85-2600 PHX-CAM to be dismissed with prejudice.

10.5 During the term and extended term of the agreements referred to in Paragraph 10.1 hereof, RWCD hereby directs SRP to deliver to SRPMIC 8,000 acre-feet per calendar year from RWCD's entitlement as defined in Paragraph 10.2 hereof. SRPMIC shall take delivery of its share of RWCD's entitlement in the period from January 1 through September 30 of each year. Subject to SRPMIC's maximum 8,000 acre-foot entitlement hereunder, SRPMIC shall be entitled to divert and use up to 1,700 acre-feet per month of RWCD's entitlement during such period, provided that water not diverted and used by SRPMIC in any month shall be available for use by RWCD. SRPMIC's entitlement under this Paragraph 10.5 shall not be carried over from month-to-month nor have storage rights for annual carryover.

In the event insufficient water is available under RWCD's entitlement to satisfy both the entitlement of SRPMIC under this Paragraph 10.5 and the entitlement of the FMIC under any settlement agreement to which RWCD and FMIC are parties, RWCD's entitlement shall be apportioned pro rata between SRPMIC and FMIC provided that SRPMIC shall receive thereby no less than 71.4% of the water available, unless SRPMIC and FMIC otherwise agree. RWCD and SRP shall be notified of any such agreement.

10.6 RWCD's direction for the delivery of water to SRPMIC pursuant to the terms of Paragraph 10.5 hereof shall be binding upon its successors and assigns. The parties to this Agreement, except for the United States acting as trustee for Indian tribes other than SRPMIC, acknowledge that RWCD's water rights as de-

scribed in the documents and instruments referred to in Paragraph 10.1 hereof are appropriative rights and are appurtenant to RWCD lands. Should any other entity succeed to RWCD's entitlement, it shall assume RWCD's rights and obligations to SRPMIC under Paragraph 10.5 hereof. RWCD and SRP agree that the term of the agreements described in Paragraph 10.1 hereof shall be extended in accordance with the provisions of Exhibit "3.n" hereto. Nothing in this Agreement shall be construed as a grant of rights between SRP and RWCD for the use of SRP facilities to deliver RWCD's entitlement.

It is the purpose of Paragraphs 10.1, 10.2, and 10.5 hereof, and of this Paragraph 10.6, to describe RWCD's water right and the circumstances under which SRPMIC shall be entitled to the delivery of water from that water right. All parties to this Agreement recognize that the circumstances and arrangements pursuant to which water is delivered to RWCD may change over time, RWCD may cease to exist, or RWCD's successors may make different arrangements for the delivery of the water to which these Paragraphs apply. Notwithstanding any such change of circumstances or arrangements, RWCD's ceasing to exist, or such different arrangements made by RWCD's successors, SRPMIC shall be entitled to continue receiving water pursuant to this Paragraph 10.0.

11.0 RID CONTRACT ENTITLEMENT, RID-PHOENIX-SRP EXCHANGE, AND WATER TRANSFER TO SRPMIC

11.1 The parties to this Agreement recognize, ratify, confirm and declare to be valid the agreement between SRP and Carrick and Mangham Agua Fria Lands and Irrigation Company (predecessor of RID) dated August 25, 1921, and approved by the Secretary on October 26, 1921; the agreement between SRP and RID dated February 3, 1927, and approved by the Secretary on February 12, 1927; and the

agreement between SRP and RID dated May 31, 1950, and approved by the Secretary on October 9, 1950.

11.2 RID, the City of Phoenix, SRPMIC and SRP have entered into or will enter into an agreement, identified as Exhibit "3.k" hereof and incorporated herein by this reference, setting forth the respective interests, obligations and responsibilities of RID, the City of Phoenix, SRPMIC and SRP in and to the water exchange described herein as the "RID Exchange."

11.3 The SRP year end accounting for water deliveries to SRPMIC will exhaust the following accounts prior to any charge against RID Exchange credits:

(a) Kent Decree water;

(b) Stored Water and Additional Stored Water as provided in Paragraph 8.2 hereof;

(c) Bartlett Dam water as provided in the Bartlett Dam Agreement as amended and supplemented by Paragraph 9.0 hereof;

(d) RWCD water as provided in Paragraph 10.5 hereof; and

(e) Cities' River Water Exchange water as provided in Paragraphs 12.8.1 through 12.8.5 hereof;

Provided, however, that this commitment does not require that the five foregoing water credit accounts be drawn upon in the order listed or in any other particular order. SRP will charge SRPMIC credits in accordance with this Paragraph 11.3 annually, and on an interim monthly basis as necessary to implement Paragraphs 12.8.1, 12.8.2, 12.8.3, 12.8.4, 12.9, 12.10 and 12.11 hereof.

. . .

. . .

11.4 There will be no charge to SRPMIC, except as provided in Paragraphs 15.1.d. and 15.5 hereof, for RID Exchange water delivered to turnout points on the Arizona Canal or South Canal .

11.5 All parties to this Agreement agree that the RID Exchange is in the best interest of all parties to this Agreement, since it will facilitate the settlement of claims which all parties desire to have resolved. The affected parties recognize that certain aspects of the RID Exchange will require Federal, State or other governmental approvals before the exchange can be accomplished; therefore, the parties agree to support all applications for permits and approvals filed by the City of Phoenix, RID, SRP or SRPMIC regarding the exchange and agree to use their best efforts to expedite the review and approval of such permits. The State of Arizona specifically agrees that it will act upon any request for permit or approval requested by the City of Phoenix, RID, SRP or SRPMIC within the statutorily required time frame. If there is a requirement by State law for a hearing upon any request for approval or permit, the State agrees to devote sufficient staff and resources of the State to such hearing process, such that a hearing is completed in a reasonable time.

11.6 The parties agree that if the RID Exchange should become impossible to implement and perform due to the inability to obtain and maintain required Federal, State or other governmental approvals or for any other reason beyond the control of RID, the City of Phoenix, SRP or SRPMIC, then the rights and obligations of the parties set forth in Exhibit "3.k" hereof shall be void and of no force and effect. All other of the rights and obligations of the parties . . .

to this Agreement , including those set forth in Paragraph 11.1 hereof, shall remain in full force and effect.

11.7 It is expressly anticipated by the parties that this RID Exchange will gradually phase out as SRP shareholders' agricultural lands receiving the RID Exchange water are urbanized or upon expiration of RID's contractual relationship with SRP as described in Paragraph 11.1 hereof, whichever occurs first. SRPMIC water demand unfulfilled because of this phase-out or because of insufficient credits in the delivery account in any year will be satisfied, if necessary, by additional groundwater pumping by SRPMIC on its reservation.

11.8 In the event this RID Exchange fails for any reason to be implemented pursuant to the terms of this Agreement and a later exchange under essentially the same terms and conditions is negotiated between Phoenix, RID and SRP then SRPMIC shall have the right to participate in such exchange on essentially the same terms and conditions as set forth in this Paragraph 11.0; provided, however, SRPMIC's participation in such an agreement shall end on December 30, 2050.

12.0 CITIES' RIVER WATER EXCHANGE

12.1 The United States shall obtain, from willing sellers, rights to 22,000 acre-feet of annual consumptive use of water from the mainstream of the Colorado River in the State of Arizona with a Colorado River priority predating September 30, 1968, and which was not included in the determination of water supplies available to the CAP. The Secretary shall make such Colorado River . . .

water available for delivery as provided in Paragraphs 12.2, 12.5 and 12.6 hereof.

12.2 The Colorado River water obtained by the United States pursuant to Paragraph 12.1 hereof shall be made available for delivery to the following parties in amounts not exceeding the following:

(a)	City of Chandler	-	4,278 acre-feet per year;
(b)	City of Glendale	-	3,000 acre-feet per year;
(c)	City of Scottsdale	-	100 acre-feet per year;
(d)	City of Tempe	-	100 acre-feet per year;
(e)	City of Mesa	-	2,760 acre-feet per year;
(f)	City of Phoenix	-	5,000 acre-feet per year;
(g)	Town of Gilbert	-	6,762 acre-feet per year;
	TOTAL	-	22,000 acre-feet per year.

12.3 RWCD shall assign to the following parties from its entitlement to CAP agricultural water under its CAP agricultural water service subcontract an amount of CAP agricultural water to be delivered to the respective points of delivery in amounts not exceeding the following, after first providing for delivery to RWCD, at RWCD's point of delivery, of 8,000 acre-feet of such CAP agricultural water:

. . .

. . .

. . .

. . .

. . .

(a)	City of Chandler	-	972 acre-feet per year;
(b)	City of Glendale	-	682 acre-feet per year;
(c)	City of Scottsdale	-	23 acre-feet per year;
(d)	City of Tempe	-	23 acre-feet per year;
(e)	City of Mesa	-	627 acre-feet per year;
(f)	City of Phoenix	-	1,136 acre-feet per year;
(g)	Town of Gilbert	-	1,537 acre-feet per year;
	TOTAL	-	5,000 acre-feet per year.

Such assignment shall be made in accordance with and governed by the terms and conditions of the agreement attached hereto as Exhibit "12.3" among the United States, CAWCD, RWCD, and the above cities and town (the "Cities").

12.4 In accordance with the agreement attached hereto as Exhibit "12.3," when RWCD's entitlement to CAP agricultural water is so reduced as a result of a reduction in RWCD's eligible acreage that RWCD can no longer provide 3,000 acre-feet of water to the Cities in a normal water supply year pursuant to the assignment referred to in Paragraph 12.3 hereof, the Secretary shall make available for delivery to the Cities at their respective points of delivery from the total supply of CAP agricultural water otherwise available for delivery from the CAP an amount of water equal to the difference between (a) 3,000 acre-feet and (b) the amount of water assigned to the Cities pursuant to the assignment referred to in Paragraph 12.3 hereof. The amount of water to be delivered to each of the Cities pursuant to this Paragraph 12.4 shall not exceed the following:

. . .

. . .

(a)	City of Chandler	-	583 acre-feet per year;
(b)	City of Glendale	-	409 acre-feet per year;
(c)	City of Scottsdale	-	14 acre-feet per year;
(d)	City of Tempe	-	14 acre-feet per year;
(e)	City of Mesa	-	376 acre-feet per year;
(f)	City of Phoenix	-	682 acre-feet per year;
(g)	Town of Gilbert	-	922 acre-feet per year;
	TOTAL	-	3,000 acre-feet per year.

12.5 Prior to the enforceability date of this Agreement, the relative amounts of water to be made available to each of the Cities pursuant to Paragraphs 12.2, 12.3 and 12.4 hereof may be adjusted by mutual agreement of such Cities. All water referred to in Paragraphs 12.2, 12.3 and 12.4 hereof shall be delivered through CAP facilities pursuant to contracts, perpetual in term, among the United States, CAWCD, and each of the respective Cities, which contracts are attached hereto as Exhibits "3.h.1" through "3.h.7." On and after the enforceability date of this Agreement, any assignment of rights under the contracts attached hereto as Exhibits "3.h.1" through "3.h.7" shall require the prior approval of CAWCD and the United States. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the CAP Master Repayment Contract, the costs associated with the delivery of water pursuant to the contracts attached hereto as Exhibits "3.h.1" through "3.h.7" shall be non-reimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

. . .

. . .

12.6 Except as provided in Paragraph 12.13 hereof concerning CAP water service capital charges, all water to be made available to the Cities pursuant to Paragraphs 12.2, 12.3 and 12.4 hereof will be made available to the Cities pursuant to contracts with the Secretary conforming substantially to the Cities' existing CAP M&I water service subcontracts. All rights to Colorado River water obtained by the United States pursuant to Paragraph 12.1 hereof shall retain their relative priority as among users of main stream Colorado River supplies; provided, however, that such water supplies shall be made available by the Secretary only for non-Indian M&I use in accordance with the contracts attached hereto as Exhibits "3.h.1" through "3.h.7."

12.7 During the terms of the contracts attached hereto as Exhibits "3.h.1" through "3.h.7," SRP will deliver to SRPMIC, as provided in Paragraphs 12.8 through 12.12 hereof, up to 20,000 acre-feet of surface water annually for use only on SRPMIC Reservation lands south of the Arizona Canal and within the exterior boundaries of the SRRD.

12.8.1 Except as provided in Paragraph 12.10 hereof, SRPMIC shall be entitled to the first 20,000 acre-feet of stored and developed water or, if sufficient stored and developed water is not available, assessment water allocated annually by SRP to the SRP assessed and townsite lands included in the Cities' individual domestic water accounts maintained by SRP. The amount of stored and developed and assessment water to be deducted from each City's domestic water account in any year shall not exceed the following:

. . .

. . .

(a) 4,278 acre-feet from the City of Chandler,

(b) 3,000 acre-feet from the City of Glendale,

(c) 100 acre-feet from the City of Scottsdale,

(d) 100 acre-feet from the City of Tempe,

(e) 2,760 acre-feet from the City of Mesa,

(f) 3,000 acre-feet from the City of Phoenix, and

(g) 6,762 acre-feet from the Town of Gilbert;

20,000 acre-feet total.

12.8.2 Except as provided in Paragraph 12.8.3 hereof, at the beginning of each calendar year SRP will deduct each City's share of SRPMIC's 20,000 acre-feet entitlement, as described in Paragraph 12.8.1 hereof, from the particular City's domestic water account maintained by SRP, and transfer that share to a special account maintained for this purpose by SRP on behalf of SRPMIC (the "SRPMIC City Exchange Water Account"). SRP shall deduct first each City's share of SRPMIC's 20,000 acre-feet entitlement from that City's allocation of SRP stored and developed water included in its domestic water account. In the event the amount of stored and developed water allocated by SRP to the SRP assessed and townsite lands included in a City's domestic water account is less than that City's share of SRPMIC's 20,000 acre-feet entitlement as described in Paragraph 12.8.1 hereof, the difference between the amount of that City's share of the 20,000 acre-feet and the amount of stored and developed water allocated by SRP to that City's domestic water account shall be deducted from that City's assessment water allocated by SRP to the SRP assessed and townsite lands included in the City's domestic water account. In the event SRPMIC receives assessment water from a City as provided in the preceding sentence, SRPMIC shall reimburse

the City for the charge for the assessment water deducted from the City's domestic water account in an amount equal to the assessment paid for such water to SRP by the City at the time SRPMIC uses the assessment water.

12.8.3 The amounts deducted and transferred from each City's domestic water account to the SRPMIC City Exchange Water Account shall not exceed the total amount of stored, developed, and assessment water allotted to each City's domestic water account by SRP for that calendar year. In the event there is insufficient assessment and stored and developed water in any City's domestic water account maintained by SRP to deliver that City's share of SRPMIC's 20,000 acre-feet, as described in Paragraph 12.8.1 hereof, neither SRP, the particular City nor any other City shall be obligated to deliver the amount of such insufficiency to SRPMIC. Any such deficiency in any City's domestic water account shall not be carried forward to subsequent years.

12.8.4 SRPMIC's rights under this Paragraph 12.0 are not dependent upon the actual receipt of water by the Cities pursuant to Paragraphs 12.2, 12.3 or 12.4 hereof. The Cities' rights under this Paragraph 12.0 are not dependent upon the actual receipt of water by SRPMIC pursuant to Paragraphs 12.7, 12.8.1, 12.8.2, 12.8.3, 12.9, or 12.10. To the extent that the provisions of Paragraph 12.7 through 12.11 hereof are contrary to the provisions of the SRP-City of Phoenix Domestic Water Delivery Agreement, Paragraphs 12.7 through 12.11 hereof shall control.

12.8.5 It is the purpose of Paragraphs 12.7 through 12.12 hereof to describe the circumstances and arrangements under which SRP will deliver to SRPMIC stored

and developed water or, if sufficient stored and developed water is not available, assessment water, allocated annually by SRP to its shareholders' assessed lands and to townsite lands included in the Cities' individual domestic water accounts as described in Paragraph 12.8.1 herein. All parties to this Agreement recognize that the terminology used to describe these circumstances and arrangements reflect SRP's current operating methodology and that SRP or its successors may alter the terminology, circumstances and arrangements through which it delivers surface water to its shareholders' lands and to townsite lands within the Cities' boundaries which are included within the Cities' individual domestic water accounts. Notwithstanding any such alterations, SRPMIC shall continue to be entitled to receive water from SRP or its successors pursuant to this Paragraph 12.0 as long as SRP or its successors continue to deliver surface water from the Salt River and Verde River to SRP shareholder's lands or townsite lands included in the Cities' individual domestic water accounts.

12.9 SRP will deliver water to SRPMIC from the SRPMIC City Exchange Water Account upon request to the extent SRPMIC has sufficient water credits for the calendar year remaining in the Account to make the delivery. If the credits in the SRPMIC City Exchange Water Account exceed 3,000 acre-feet on October 30, SRP will reallocate such excess to the Cities' domestic water accounts in the same proportion as the deductions for those accounts as provided in Paragraph 12.8 hereof. If the SRPMIC City Exchange Water Account exceeds 1,000 acre-feet on November 30, SRP will reallocate such excess to the Cities' domestic water accounts in the same proportions. Upon the instruction of SRPMIC, SRP shall reallocate additional amounts from the SRPMIC City Exchange Water Account on or after October 30 of the year. The Cities shall pay to SRP the normal delivery

price of any water used by them which was made available to the Cities under this Paragraph 12.9. The credits in the SRPMIC City Exchange Water Account shall automatically be reduced to zero at 11:59 p.m. of December 31 of each year.

12.10 The amount of water available for delivery to SRPMIC under this Paragraph 12.0 will be phased in from the year 1987 to the year in which 20,000 acre-feet of water is first available under the following formula: The annual number of acre-feet of water which shall be available for delivery to SRPMIC by SRP under this Paragraph 12.0 during the phase-in period will be the lesser of (a) the number of agricultural acres within SRP permanently taken out of agricultural production use to date during the phase-in period multiplied by one acre-foot or (b) 2,000 multiplied by the number of years since 1986. From and after the year in which 20,000 acre-feet of water is first available, and subject to the provisions of Paragraphs 12.7, 12.8, 12.9, and 12.11 hereof, there shall be available for delivery to SRPMIC from SRP in every year 20,000 acre-feet of stored, developed and assessment water. The annual delivery of water to SRPMIC under this Paragraph 12.0 shall not exceed 20,000 acre-feet. The first delivery of such water will be made, on the order of SRPMIC, in the calendar year in which the enforceability date occurs, and shall be made available under the provisions of this Paragraph 12.10, in each year thereafter on the order of SRPMIC.

12.11 SRPMIC agrees to use no more Bartlett Dam Agreement water north of the Arizona Canal than the amount of water available for delivery to SRPMIC under this Paragraph 12.0. The Cities shall continue to pay assessments and fees to

SRP for SRRD lands included within the domestic water agreements with SRP, but the Cities shall bear no cost for the delivery of SRP water to the SRPMIC pursuant to this Paragraph 12.0. SRPMIC will pay to SRP the water delivery charges for this exchange water as provided in Paragraphs 15.1.(b), 15.1.(c), 15.1.(d) and 15.5 hereof.

12.12 SRP will bear no costs associated with the Cities' River Water Exchange and neither SRP nor its members shall be subject to the provisions of the Reclamation Reform Act as a result of this exchange.

12.13 The Cities shall pay all operation, maintenance and replacement ("OM&R") charges associated with water delivered to the Cities pursuant to Paragraphs 12.2, 12.3 and 12.4 hereof. Such charges shall be paid by the Cities to the United States or, at the Secretary's direction, to CAWCD, under the same terms and conditions and at the same acre-foot rate as is provided for CAP M&I water under the Cities' CAP M&I water service subcontracts. Except as provided in the agreement attached hereto as Exhibit "12.3," the Cities shall not be obligated to pay any CAP water service capital charges with respect to the delivery of water to the Cities pursuant to paragraphs 12.2, 12.3 or 12.4 hereof.

12.14 The Cities each agree that, within one year after the date of enactment of an Act authorizing and approving this Agreement, as generally described in Paragraph 21.6 hereof, they shall deposit $9 million into an escrow account, as described in Exhibit "12.14," in the following percentages:

. . .

. . .

City of Chandler	-	19.45%
City of Glendale	-	13.64%
City of Scottsdale	-	0.45%
City of Tempe	-	0.45%
City of Mesa	-	12.55%
City of Phoenix	-	22.73%
Town of Gilbert	-	30.73%
		100.00%

The escrow account, excluding interest earned thereon, shall be used by the United States for the purposes of acquiring the rights described in Paragraph 12.1 hereof. The escrow account shall be administered in accordance with the agreement attached hereto as Exhibit "12.14." Funds in the escrow account shall only be provided to the United States for the purpose of paying (1) the land purchase price and such necessary and reasonable costs as are customarily incurred by purchasers in acquiring real estate in Arizona and (2) administrative costs associated with acquisition of the Colorado River water rights. Costs other than land purchase price shall not exceed $200,000. Administrative costs shall include costs incurred by the United States, with its own forces or by contract forces, for the following types of activities: (1) preparation and negotiation of an amendatory contract with an irrigation district for the acquisition of the Colorado River water rights; (2) identifying willing sellers of land; (3) meetings with willing sellers of land and the irrigation district; (4) preparation and negotiation of land purchase option contracts; (5) preparation, negotiation, and administration of contracts with third parties to perform land acquisition activities on behalf of the United States; and (6) preparation of legal descriptions, land plats, title reports, and appraisal

reports. Administrative costs incurred by the United States for these activities shall include costs for salaries, travel, per diem, leave of employees, and legal and overhead costs. Such administrative costs shall be limited to the minimum amount necessary to acquire the land and water rights, as determined by the United States. Each City's obligation to fund the acquisition of the water rights described in Paragraph 12.1 shall be considered to have been met upon its deposit into the escrow account of its share of the $9,000,000 as provided in this Paragraph 12.14.

13.0 GROUNDWATER

Subject to this Paragraph 13.0 and to Paragraph 17.0 hereof, SRPMIC asserts its right to unimpeded use of

(a) the groundwater underlying the SRPMIC Reservation and

(b) the deep percolation recharge from water use on the SRPMIC Reservation. However, at such time as non-Indian groundwater users in the East Salt River sub-basin of the Phoenix Active Management Area limit their groundwater pumping to a safe yield quantity, the SRPMIC will limit long-term average pumping on the SRPMIC Reservation to 32,640 acre-feet per year, the safe yield quantity, as provided in Paragraph 4.0 hereof, unless additional groundwater pumping is required by virtue of the elimination of water which would otherwise be provided under Paragraph 11.0 hereof, in which event long-term average groundwater pumping on the SRPMIC Reservation will be limited to 33,250 acre-feet per year. With the exception of Spill Water described in Paragraph 14.0 hereof, total water use on the SRPMIC Reservation shall be limited to 122,400 acre-feet per year as provided in Paragraphs 5.0 and 6.0 hereof.

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14.0 SPILL WATER

The parties to this Agreement recognize that SRP and SRPMIC, as well as other water users, have asserted appropriative claims to the flood flow waters from the Salt and Verde Rivers in excess of the existing storage capacities of SRP reservoirs on those Rivers ("Spill Water"). The SRP and SRPMIC Spill Water claims are based upon the alleged actual diversion and beneficial use of this Spill Water through Granite Reef Dam and they extend to the capacity of the SRP and SRPMIC transmission and distribution systems at the time of these diversions. Although the United States has filed a claim on behalf of SRPMIC for Spill Water, SRP shall prosecute its claim and that of SRPMIC to this Spill Water in the Gila River Adjudication. Neither the SRPMIC nor the United States shall prosecute a separate claim for this Spill Water in the Gila River Adjudication or in any other administrative or judicial proceeding. The United States shall not challenge any claims to Spill Water in the Gila River Adjudication or in any other administrative or other judicial proceeding. SRP shall use its best efforts to establish the validity of these claims in the Gila River Adjudication and the SRPMIC and the United States agree to provide reasonable assistance to SRP upon request. All parties to this Agreement other than SRPMIC and the United States reserve the right to assert claims to Spill Water, protest the Spill Water claims of SRP and SRPMIC or protest the validity of any appropriation of Spill Water, and/or seek appropriative rights wherein such Spill Water would be stored in Additional Active Conservation Capacity. Any information given by the United States to SRP related to SRPMIC's Spill Water claim will be available to all other parties to this Agreement upon request.

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15.0 OPERATION AND MAINTENANCE OF SRPMIC DELIVERY SYSTEM

15.1 SRP will operate and maintain SRPMIC's existing water delivery system, including groundwater wells and pumps, located south of the Arizona Canal and within the exterior boundaries of the SRRD after that delivery system has been rehabilitated to such a degree that its condition is equivalent to SRP's delivery system. So long as SRP operates this segment of SRPMIC's water delivery system, it shall deliver water to the high point of each quarter section of SRPMIC Reservation lands within the SRRD for the following water delivery charges:

(a) Groundwater -- water delivery costs will reflect the actual cost of OM&R and power associated with wells on the reservation within the SRRD (approximately $35/acre-foot in 1987);

(b) Stored Water, Additional Stored Water, and Cities' Exchange Stored and Developed Water used by SRPMIC for agricultural irrigation uses -- the normal cost per acre-foot of stored water charged for irrigation use as determined on an annual basis by the Salt River Valley Water Users' Association's Board of Governors (approximately $9.00/acre-foot in 1988), for water users other than non-profit corporations within the SRRD which may receive free water from SRP for irrigation uses under limited circumstances;

(c) Stored Water, Additional Stored Water, and Cities' Exchange Stored and Developed Water for all uses by SRPMIC other than agricultural irrigation uses -- the normal cost per acre-foot of stored water charged for uses other than irrigation use as determined on an annual basis by the Salt River Valley Water Users' Board of Governors.

(d) Kent Decree, Bartlett Dam, Cities' Exchange assessment water, RWCD, and RID Exchange Water -- fifty percent (50%) of the normal cost per acre-foot of stored water as determined by the Salt River Valley Water Users' Association's Board of Governors (approximately $4.50/acre-foot in 1987).

(e) Spill Water -- the cost per acre-foot charged by SRP to SRP shareholders for the delivery of Spill Water.

15.2 Upon further agreement of SRP and SRPMIC, SRP will also operate and maintain (1) SRPMIC's water delivery system, including groundwater wells and pumps, located north of the Arizona Canal after that delivery system has been completed or has been rehabilitated to such a degree that its condition is equivalent to SRP's delivery system, and (2) SRPMIC's CAP water delivery system located north and/or south of the Arizona Canal after that delivery system has been completed. So long as SRP operates these systems, it shall deliver water to the high point of each quarter section of SRPMIC lands at SRP's actual cost for operating and maintaining the system.

15.3 A separate agreement will be negotiated between SRP and SRPMIC with the approval of the Secretary, if necessary, for operation and maintenance of the facilities referred to in this Paragraph 15.0. SRP will use its best efforts to hire and train members of SRPMIC to operate and maintain the system. The operation and maintenance agreement will incorporate provisions to this effect.

15.4 Prior to substantial completion of the SRPMIC CAP water distribution system, the Secretary and SRPMIC will execute a separate agreement concerning

transfer of the responsibility to operate, maintain and repair the reservation CAP water distribution system.

15.5 Either SRP or SRPMIC may terminate SRP's operation and maintenance of the SRPMIC water delivery system upon twenty-four (24) months' advance written notice to the other party. Upon such termination SRP will deliver SRPMIC's Kent Decree water, Bartlett Dam water, Cities' Exchange assessment water, RID Exchange water, and RWCD water to the SRPMIC's turnouts in the Arizona Canal without charge to SRPMIC. SRP will be paid by SRPMIC for all other water delivered to SRPMIC at 50 percent of the normal cost per acre-foot of stored water as determined on an annual basis by the Salt River Valley Water Users' Association's Board of Governors.

16.0 LIMITATIONS ON TRANSPORTATION AND USE OF SRP WATER

16.1 SRPMIC will not transport either Kent Decree water, Stored water, Additional Stored water, Cities' Exchange water, or groundwater pumped within the boundaries of the SRRD to lands or uses outside that portion of the SRPMIC Reservation within the exterior boundaries of SRRD. Bartlett Dam water will not be transported outside the SRRD except as provided in Paragraph 12.11 hereof.

16.2 Except as provided in Paragraph 19.0 hereof, the water made available to SRPMIC from the various sources under this Agreement is solely for use on the SRPMIC Reservation. There are no restrictions on the purposes for which water may be used within the SRPMIC Reservation.

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17.0 SRPMIC WAIVER OF CLAIMS

17.1 Except as provided in Paragraph 17.2 hereof, SRPMIC, on behalf of itself and its members, shall execute a waiver and release of:

(a) Any and all past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water, and effluent) for lands within the SRPMIC Reservation, from time immemorial to the date of execution of such waiver and release, which SRPMIC may have, or which it may have standing to assert on behalf of its members, against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation or municipal corporation, under the laws of the United States or the State of Arizona;

(b) Any and all future claims of rights to water (including water rights in groundwater, surface water, and effluent) for lands within the SRPMIC Reservation, from and after the date of execution of such waiver and release, which SRPMIC may have, or which it may have standing to assert on behalf of its members, against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona; and

(c) All past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water and effluent) for lands outside of the exterior boundaries of the SRPMIC Reservation based upon aboriginal occupancy by the Pima and Maricopa Indians, which SRPMIC may have, or which it may have standing to assert on behalf of its members, against the United States, the State of Arizona and any agency or political

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subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona.

Nothing herein shall prevent SRPMIC from participating with other entities in further activities to augment the water supply available to the Salt River Valley. The waiver and release will be in the form set out in Exhibit "3.o" to this Agreement.

17.2 Notwithstanding the execution by SRPMIC of the waiver and release described in Paragraph 17.1 hereof, SRPMIC, its members, and the United States on their behalf, shall retain the right to assert the following claims:

(a) Any claim for damages to water quality; provided, however, that Paragraph 17.1 hereof shall be construed to bar SRPMIC and its members from asserting any claim for damages to water quality caused by (1) the withdrawal of groundwater in accordance with the Arizona Groundwater Management Act; (2) the parties' performance of their obligations under this Agreement; (3) changes to water quality caused by the delivery or commingling of water delivered from the CAP with any of the water described in Paragraph 6.0 of this Agreement; or (4) any combination thereof.

(b) Claims against the United States as provided in Section 10 of the Salt River Pima-Maricopa Water Rights Settlement Act of 1988 (the "Act").

(c) Claims of water rights or injuries to water rights, other than those based upon aboriginal occupancy by the Pima and Maricopa Indians, for lands outside of the exterior boundaries of the SRPMIC Reservation acquired by SRPMIC or the United States on behalf of SRPMIC subsequent to January 1, 1985.

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(d) Claims for the enforcement of SRPMIC's water rights as provided for in this Agreement under the continuing jurisdiction of the Court in the Gila River Adjudication.

(e) Claims against any person for the breach or enforcement of the terms of this Agreement or rights recognized herein.

17.3 Any entitlement to water of any individual member of the SRPMIC or its allottees for lands within the SRPMIC Reservation shall be satisfied out of the water resources provided in this Agreement.

17.4 Except as provided in Section 10(d) of the Act, the United States shall not assert any claim against any person in its own right or on behalf of SRPMIC based upon (1) water rights or injuries to water rights of SRPMIC, its members or allottees; or (2) water rights or injuries to water rights held by the United States on behalf of SRPMIC, its members or allottees.

17.5 The parties shall file a stipulation and form of judgment in the Gila River Adjudication in the form of Exhibit "3.e" hereto. The United States shall be permitted to support any claim of any party to this Agreement filed in the Gila River Adjudication from which SRPMIC's water rights under this Agreement are derived.

17.6 Except for actions in the United States Claims Court, the United States and SRPMIC shall dismiss with prejudice all water and power-related litigation pending in Federal or State courts in which SRPMIC is a plaintiff or which has . . .

been brought by the United States on behalf of SRPMIC. The dismissals shall be in the form set out in Exhibits "3.a," "3.b," "3.c," and "3.f."

17.7 The United States and SRPMIC waive their sovereign immunity from suit in Federal District Court in regard to any claim which relates to the interpretation or enforcement of this Agreement.

18.0 RECHARGE ARRANGEMENTS

SRP, the Cities, and the SRPMIC will cooperate in studying the location of potential sites for water related underground storage and recovery facilities or recharge facilities on SRP, City, State of Arizona, Federal and SRPMIC lands. The SRPMIC will provide reasonable access to the SRPMIC Reservation for the purpose of conducting such a study to the extent that such a study does not unreasonably interfere with SRPMIC land use and does not unreasonably damage SRPMIC land. If the study determines that a potential site on the SRPMIC's Reservation is appropriate for recharge use, and such use will not unreasonably interfere with SRPMIC land use and the facilities are operated as comprehensive projects among the parties, the parties identified in this Paragraph 18.0 will negotiate in good faith for the use of necessary land for the location, construction and operation of such a facility.

19.0 CAP WATER LEASE

19.1 The Secretary and SRPMIC shall amend their contract dated December 11, 1980, for the delivery of 13,300 acre-feet of CAP water, to permit the leasing by SRPMIC of all of that CAP entitlement to the Cities for a term of 99 years

from the year 2000; provided that the Secretary shall be a party to any contract or lease. The maximum annual amount of water to be used by SRPMIC as provided in Paragraphs 5.0, 6.0 and 13.0 hereof shall be reduced by the amount of CAP water leased for use outside the SRPMIC Reservation. SRPMIC shall lease all right, title and interest it has under the terms of the CAP Indian Water Delivery Contract between the United States and SRPMIC dated December 11, 1980 ("the Contract"), to 13,300 acre-feet of CAP water to the Cities for a term not to exceed 99 years from the year 2000. The Secretary and SRPMIC will amend the Contract to extend the Contract term to the year 2099. SRPMIC shall lease to the Cities, in accordance with the percentage reflected in Paragraph 19.6 hereof, all of its CAP allocation for the total sum of $16 million. Each City, on the enforceability date of this Agreement, shall elect to pay its lease amount by (i) payment of its entire lease amount on the enforceability date of this Agreement, (ii) payment of one-half its lease amount on the enforceability date of this Agreement and the balance in four (4) equal annual payments beginning on the first anniversary of the enforceability date of this Agreement, with interest on the unpaid balance at the annual rate of one percent (1%) over the net interest rate paid by the City of Phoenix on its Water Revenue Refunding Bonds, Series 1986, as determined on the effective date of this Agreement, or (iii) payment in eight (8) equal annual installments beginning on the enforceability date of this Agreement, with interest on the unpaid balance at the annual rate of one percent (1%) over the Valley National Bank Home Office prime rate as determined on the enforceability date of this Agreement. The principal amount may be prepaid at any time without penalty.

The lease shall bind the Cities to those provisions of each City's CAP M&I water service subcontract which are enumerated in the lease. The lease of CAP

water from SRPMIC to the Cities shall not obligate either the Cities or SRPMIC to pay CAP capital repayment charges. The Cities shall pay full operation, maintenance and replacement costs to the United States, or, at the Secretary's discretion, directly to CAWCD. The lease shall be evidenced by water lease agreements between SRPMIC, the Secretary and the individual Cities in the form attached as Exhibits "3.m.1" through "3.m.7" hereto.

19.2 SRPMIC shall direct the Secretary to deliver its CAP water to the lessees in accordance with each City's entitlement to such water under the Project Water Lease Agreements attached as Exhibits "3.m.1" through "3.m.7" hereto; provided, however, that neither the Secretary nor CAWCD shall be obligated to make such deliveries if, in the judgment of CAWCD or the Secretary, delivery or schedule of deliveries to the lessees would limit deliveries of CAP water to other CAP subcontractors to a degree greater than would deliveries to SRPMIC.

19.3 For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the CAP Master Repayment Contract, the costs associated with the delivery of CAP water leased by SRPMIC shall be non-reimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

19.4 Except for CAP water, no other water provided to SRPMIC pursuant to this Agreement shall be marketable by SRPMIC.

19.5 In the settlement of all of the issues resolved in this Agreement, the Cities and SRPMIC have assumed that the Indian CAP project water allocation is a

federal resource which would not be subject to taxation. Although it is the understanding and intent of the Cities and SRPMIC that Indian CAP project water allocations are not subject to taxation in the first instance, to the extent that any such taxation right or power may exist, the Cities and SRPMIC each agree to refrain from imposing any tax on the lease, the project water or any tax measured by the value of the project water to be delivered under this Agreement or the transportation of project water under this Agreement and each expressly waives any right it may have to levy any such tax.

19.6 The Cities shall be entitled to lease the SRPMIC CAP allocation in the amounts as set forth below. Any City electing not to take its entitlement provided for herein shall offer its entitlement to all of the remaining Cities pro rata, except that the City may voluntarily offer its entitlement to any one or more of the remaining Cities if such City or Cities agree to accept assignment of the offering City's rights and obligations with respect to that City's Colorado River water as provided in Paragraph 12.0 hereof:

	Percentage Shares	Water Amount
(a) City of Chandler	19.45%	2,586 acre-feet per year
(b) City of Glendale	13.64%	1,814 acre-feet per year
(c) City of Scottsdale	0.45%	60 acre-feet per year
(d) City of Tempe	0.45%	60 acre-feet per year
(e) City of Mesa	12.55%	1,669 acre-feet per year
(f) City of Phoenix	22.73%	3,023 acre-feet per year
(g) Town of Gilbert	30.73%	4,088 acre-feet per year
TOTAL	100.00%	13,300 acre-feet per year

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20.0 COST SHARING RESPONSIBILITIES

20.1 Since the duty of water agreed to by SRPMIC is realistic only if the water transmission and delivery system employed is highly efficient, the Secretary will request the Congress to appropriate approximately $58.22 million for facilities to augment and to renovate the SRPMIC's existing water delivery system, to subjugate additional lands and for other purposes. The parties will support the requested appropriation and any supplemental appropriation necessary. Of the $58.22 million, $17 million will be deposited into the Community Trust Fund for rehabilitation and improvement of SRPMIC's existing water delivery system and lands, $10 million will be for the design and construction of new facilities for the delivery of water from the SRPMIC turnout on the CAP Granite Reef Aqueduct to lands lying north and south of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement (which shall include sums as may already have been appropriated and expended for such purposes), $30.47 million will be deposited into the Community Trust Fund for SRPMIC to use in the design and construction of facilities for the development of additional lands to put to beneficial use the Community's water entitlement, for other economic and community development on the SRPMIC Reservation and to defray the cost to SRPMIC of CAP OM&R charges, and $.75 million will be for Additional Active Conservation Capacity. This Agreement includes local water provided to SRPMIC by SRP, RWCD, RID and the Cities, which has been estimated by the local parties to have a value of $96 million. In addition to the local water contribution provided for herein, there shall be a local cash contribution to the United States of $9 million for purchase of the Colorado River Water and . . .

of $21 million to be paid into the trust fund described in Paragraph 20.2(b) hereof.

20.2 The parties have agreed that the direct costs including contributions in-kind described in Paragraph 20.2(a), subject to authority and appropriations where necessary, will be funded or contributed as follows:

(a) Direct Contributions To Costs

Local Contributions		
1. In-kind		
LOCAL WATER (Estimated In-Kind Value)	$ 96 Million	
2. Money		
COLORADO RIVER WATER PURCHASE	9 Million	
CAP WATER LEASE	16 Million	
STATE OF ARIZONA	3 Million	
SRPMIC	2 Million	
SUBTOTAL	$126 Million	(68.4%)
U.S. Contribution		
FACILITIES-WATER SUPPLY	10 Million	
FACILITIES-REHAB	17 Million	
TRUST FUND	26 Million	
CAP OM&R WATER COST	4.47 Million	
STORAGE	.75 Million	
SUBTOTAL	$58.22 Million	(31.6%)

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(b) Trust Fund Composition

Cash contributions will be made to a trust fund to be used for water development projects and other economic and community development projects. The trust fund will be composed of the following contributions:

UNITED STATES		$47.47 Million
CAP WATER LEASE		16 Million
STATE		3 Million
SRPMIC		2 Million
	TOTAL	$68.47 Million

20.3 The United States shall make no claims for reimbursement of costs arising out of the implementation of the Act or this Agreement against any Indian-owned land within the SRPMIC's Reservation, and no assessment shall be made in regard to such costs against such lands.

21.0 OTHER PROVISIONS

21.1 Disclaimer - Nothing in this Agreement shall be construed as establishing any standard to be used for the quantification of Federal reserved rights, aboriginal claims, or any other Indian claims to water in any judicial or administrative proceeding.

21.2 Evidentiary Effect of Negotiations - This Agreement has been arrived at in the process of good faith negotiation for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or

compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding other than one for approval, confirmation, interpretation, or enforcement of this Agreement.

21.3 Effect of Execution by State of Arizona - Execution of this Agreement by the State of Arizona constitutes the confirmation that it is the policy of the State of Arizona to assist in carrying out the provisions hereof to the extent it may do so in accordance with its responsibility and authority under the law. It is not intended that this Agreement shall be determinative of the action to be taken by any state agency in any adjudicatory or rule making proceeding. Nothing herein shall be construed as a waiver of any rights which the State of Arizona has as to its trust lands under the Enabling Act.

21.4 Water delivery during Plan 6 construction - The parties to this Agreement recognize that there may be interim water supply shortages during Plan 6 construction, other provisions of this Agreement notwithstanding. The SRPMIC agrees to accept during that construction period shortages in water supply that are of the same magnitude as shortages accepted by other Salt River water users for the affected classes of water. Details of water supply and shortage during construction will be agreed to in advance of Roosevelt Dam modification.

21.5 SRPMIC/SRP Electricity Rate Litigation

21.5.1 After the enforceability date of this Agreement, all electricity used by SRPMIC for agricultural groundwater pumps on the SRPMIC Reservation shall be billed by SRP at SRP's Standard E47 Agricultural Pumping Rate or any

future rate which is the standard rate applied to SRP agricultural pumping customers. After the enforceability date of this Agreement, SRP shall transfer ownership to SRPMIC, free of charge, those electrical distribution facilities associated with these pumps which must be owned, maintained and replaced by SRP customers being billed for agricultural pumping at the Standard E47 Agricultural Pumping Rate. These facilities include, but are not limited to, the transformers adjacent to the pumps, the transformer platforms and poles, wiring from the transformers to the pumps, and the meter boxes. The jumper wires shall be transferred to SRPMIC on single pole installations and retained by SRP on two pole structures. SRP shall retain ownership of the disconnects, phase wires, neutral wires, meters and metering transformers. Thereafter, SRPMIC shall maintain and replace at its cost all facilities transferred to it by SRP under this Paragraph 21.5.1.

21.5.2 SRPMIC shall be entitled to participate in SRP's Experimental Time of Week Rider for agricultural pumping by SRPMIC on the SRPMIC Reservation for as long as this experimental program remains in effect; provided, however, that SRPMIC must satisfy all conditions imposed by SRP on participants in the Experimental Rider. The primary condition to participating in this program is the customer's agreement to turn-off each pump for the same designated 10 hour period each week from May 15 through October 14 of each year. In the event this Experimental Rider is canceled by SRP, SRPMIC shall be entitled to participate in any replacement experimental or permanent rate program applicable to agricultural pumping by SRP customers; provided, however, that SRPMIC must satisfy all conditions imposed by SRP on participants in all future programs.

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21.6 Enforceability Date and Related Matters

21.6.1 This Agreement shall be effective and binding when it has been executed by all parties hereto and when the parties to this Agreement have executed all Exhibits to the Agreement which call for their signatures. Other than to take all steps necessary to cause the events described in Paragraphs 21.6.1(a) and (b) hereof to occur, no party to the Agreement shall be required to perform any of the obligations, or be entitled to receive any of the benefits, under the Agreement or under any of the Exhibits until such time as all of the following events have occurred, which date is referred to herein as the "enforceability date":

(a) The authorization in Section 10(b)(1) of the Act has become effective; and

(b) The permits required to effect the RID exchange pursuant to Paragraph 11.0 hereof have been granted by December 31, 1991. This condition may be eliminated if waived by notice to the parties to this Agreement by SRPMIC on or before December 30, 1991. Notice of the waiver will be given to the parties to this Agreement five days prior to its effective date.

In the event each of the foregoing events shall not have occurred, by the date indicated, this Agreement shall be of no further force or effect.

21.6.2 Exhibit "21.6" is the Act of Congress which authorizes the federal action required to carry out this Agreement. Any Act of Congress which materially amends the Act set forth in Exhibit "21.6" hereto prior to the enforceability date of this Agreement without the written consent of the parties

adversely affected by the amendment shall relieve all parties to this Agreement of their obligations hereunder.

21.6.3 In the event the authorizations contained in section 10(b)(1) of the Act have become effective and a party to the Gila River Adjudication has obtained the reversal of the judgment of the Maricopa County Superior Court approving Exhibit "3.e" and no further appeal may be taken, the parties to this Agreement shall:

(a) Perform all of their respective obligations under this Agreement, unless otherwise ordered by a court of competent jurisdiction; and

(b) Permit SRPMIC and its members, and the United States on their behalf, to assert in the Gila River Adjudication claims for water rights in addition to the 122,400 acre-feet of water available as a maximum annual water entitlement to SRPMIC under this Agreement, and the other parties to this Agreement agree not to assert any defenses against SRPMIC and the United States, including, inter alia: (1) That SRPMIC and the United States are prohibited by the Kent Decree from asserting a larger federal reserved water right on behalf of SRPMIC; and (2) That the practicably irrigable acreage standard set forth in Arizona v. California does not apply to the SRPMIC Reservation; however, SRPMIC and the United States agree that a reserved right up to 122,400 acre-feet will be satisfied as provided in the Agreement, and that if a right in excess of 122,400 acre-feet is awarded, the excess of such right will not be exercised, in any phase of the Gila River Adjudication or any subsequent proceedings, against junior rights held by other parties to this Agreement and the water rights appurtenant to shareholder lands within the SRRD.

21.6.4 In the event the authorizations contained in section 10(b)(1) of the Act have become effective and a party to the Gila River Adjudication has obtained the reversal of the judgment of the Maricopa County Superior Court approving Exhibit "3.e" hereto, and no further appeal may be taken, and a court of competent jurisdiction has permanently ordered any single party to this Agreement not to perform an obligation to deliver water to SRPMIC as provided in this Agreement,

(a) All other parties to this Agreement shall perform all of their respective obligations under this Agreement, unless otherwise ordered by a court of competent jurisdiction;

(b) The party ordered not to perform an obligation to deliver water to SRPMIC as provided in this Agreement shall perform all of its remaining obligations, if any, under this Agreement; that party shall be relieved of its obligations under this Agreement only to the extent necessary to comply with the Court's Order; and

(c) SRPMIC and its members, and the United States on their behalf, may assert in the Gila River Adjudication claims for water rights in addition to the 122,400 acre-feet of water available as a maximum annual water entitlement to SRPMIC under this Agreement, and the other parties to this Agreement agree not to assert any defenses against SRPMIC and the United States, including, inter alia: (1) That SRPMIC and the United States are prohibited by the Kent Decree from asserting a larger federal reserved water right on behalf of SRPMIC; and (2) That the practicably irrigable acreage standard set forth in Arizona v. California does not apply to the SRPMIC Reservation; however, SRPMIC and the United States agree that a

reserved right up to 122,400 acre-feet will be satisfied as provided in the Agreement, to the extent not precluded by an order of a court of competent jurisdiction as provided in Paragraph 21.6.4(a) hereof, and that if a right in excess of 122,400 acre-feet is awarded, the excess of such right and the amount of any SRPMIC right under the Agreement which has been enjoined as provided in Paragraph 21.6.4(a) will not be exercised, in any phase of the Gila River Adjudication or in any subsequent proceedings, against junior rights held by other parties to this Agreement and the water rights appurtenant to shareholder lands within the SRRD.

21.6.5 In the event the authorizations contained in section 10(b)(1) of the Act have become effective and a party to the Gila River Adjudication has obtained the reversal of the judgment of the Maricopa County Superior Court approving Exhibit "3.e" hereto, and no further appeal may be taken, and a court of competent jurisdiction has permanently ordered more than one of the parties to this Agreement not to perform an obligation to deliver water to SRPMIC as provided in this Agreement, then, unless otherwise agreed by SRPMIC, this Agreement shall be null and void and, except as provided in this Paragraph 21.6.5, all parties shall be relieved of their obligations under this Agreement. All funds appropriated pursuant to sections 9(a)(2) and 9(c) of the Act which have not been expended by SRPMIC shall revert to the Treasury of the United States and any funds appropriated pursuant to Paragraph 20.2(b) of this Agreement which have not been expended by SRPMIC shall revert to the State of Arizona. If SRPMIC has expended some of the funds appropriated by the United States and the State, the remaining funds shall be apportioned between the United States and the State in proportion to their respective contributions to

the Community Trust Fund pursuant to these sections of the Act and the Agreement.

21.7 Uses - All parties to this Agreement recognize that water uses on the urbanized portions of the lands within SRRD and RWCD have changed and will continue to change from agricultural uses to municipal and industrial uses. The parties agree that such changes in use are valid, and that water appurtenant to lands which are now or will become urbanized within a particular municipal or other water service area may be delivered for M&I uses on such urbanized lands and the water rights appurtenant to such urbanized lands shall carry the original priority dates. With the exception of type of use, these water rights are as described in the Kent Decree, the Lehane decision (W. C. Lehane v. Salt River Valley Water Users' Assoc., et al., Cause No. 32021-C) and Paragraphs 21.8 and 10.1 hereof and the documents referred to therein. No party to this Agreement shall challenge or otherwise object to these rights on the basis of change of use, nature of delivery, or on any other bases in any judicial or administrative proceeding. As to urbanized lands within the SRRD, the parties agree that the historical practices of the Cities and SRP and the general nature of the rights are appropriately described in the Water Commissioner's Report of June 3, 1977, a copy of which is attached hereto as Exhibit "21.7." Nothing in this Paragraph 21.7 shall be construed as authorizing the delivery of water to any municipality by SRP for M&I uses within the SRRD in the absence of a written delivery agreement between any such municipality and SRP. The term "party" or "parties" as used in this Paragraph 21.7 means all parties to this Agreement

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except for the United States acting as trustee for Indian tribes other than SRPMIC.

21.8 Confirmation of Rights

21.8(a) The parties to this Agreement, except for the United States acting as trustee for Indian tribes other than SRPMIC, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication, or otherwise, the rights of the City of Phoenix to the waters of the Salt and Verde Rivers, which rights are described, stated, confirmed or established in the following documents:

(1) Contract No. 1830 between the United States of America, the City of Phoenix and the Salt River Valley Water Users' Association dated October 7, 1948.

(2) Contract No. 1604 between the Salt River Valley Water Users Association and The City of Phoenix dated November 22, 1946, to the extent that Contract No. 1604 is in accordance with and consistent with Contract No. 1830 described in Paragraph 21.8(a)(1) hereof.

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(3) Certificate of Water Right No. 1999 from the State of Arizona to the City of Phoenix.

21.8(b) The parties to this Agreement, except for the United States acting as trustee for Indian tribes other than SRPMIC, ratify, confirm, declare to be valid, and agree not to object to, dispute, or challenge in the Gila River Adjudication, or otherwise, the rights of SRP and its shareholders to the waters

of the Salt and Verde Rivers, which rights are appurtenant to the lands of SRP and its shareholders, and are described, stated, confirmed or established in the following documents:

(1) Notices of Appropriation of Water posted and recorded by the Hudson Reservoir and Canal Company with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 1 at page 283 on April 20, 1893, Book of Canals No. 1 at page 310 on August 22, 1893, and Book of Canals No. 2 at page 74 on August 31, 1901 and with the Gila County, Arizona Recorder's Office in Book No. 1 of Miscellaneous Records at pages 478 to 480 on April 22, 1893.

(2) Notice of Appropriation of Water posted and recorded by Frank H. Parker, Secretary of the Salt River Valley Water Users' Association, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 155 on February 8, 1906.

(3) Notice of Appropriation of Water posted on February 6, 1906 and recorded by Louis C. Hill, Supervising Engineer, United States Geological Survey, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 156 on February 8, 1906.

(4) Notice of Appropriation of Water posted on March 4, 1914, and recorded by John P. Orme, President of the Salt River Valley Water Users' Association, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 379 on March 6, 1914.

(5) Decision and Decree, and all Decrees supplemental thereto, entered in Hurley v. Abbott, In the District Court of The Third Judicial District of The Territory of Arizona, In and For The County of Maricopa, No. 4564, March 1, 1910.

(6) Decision and Decree, and all supplemental Decrees thereto, entered in Benson v. Allison, in the Superior Court of Maricopa County, State of Arizona, No. 7589, November 14, 1917, solely as applied to the Northeast 1/4 of Section 25, Township 1 North, Range 1 East, G&SRB&M.

(7) Salt River Valley Water Users' Association Articles of Incorporation, as amended, in existence on February 12, 1988.

(8) Water Right applications approved and accepted by authority of the Secretary of Interior for homestead lands under the Reclamation Act and for Lands in Private Ownership and Lands Other than Homesteads Under the Reclamation Act between The United States of America, Department of Interior, Bureau of Reclamation and individual shareholders of the Salt River Valley Water Users' Association.

(9) Agreement between the United States of America and Salt River Valley Water Users' Association, dated June 25, 1904.

(10) Contract between the United States of America and Salt River Valley Water Users' Association dated September 6, 1917, as amended on July 26, 1922, April 25, 1928, June 30, 1930, November 29, 1930, September 10, 1941, and June 30, 1950.

(11) Contract between the United States of America and Salt River Valley Water Users' Association, dated June 3, 1935 (Verde River Storage Works).

(12) Contract between the United States of America and Salt River Valley Water Users' Association, dated November 26, 1935, as amended on October 14, 1936, October 2, 1939 and September 10, 1941 (Construction of Bartlett Dam).

. . .

(13) Contract between Salt River Valley Water Users' Association and Salt River Project Agricultural Improvement and Power District, dated March 22, 1937, as amended on February 28, 1944, and September 12, 1949.

(14) Agreement between Salt River Valley Water Users' Association, Phelps Dodge Corporation and Defense Plant Corporation, dated March 1, 1944 (Horseshoe Dam Construction and Operation).

21.9 Order of Spill - The City of Phoenix and the SRPMIC storage entitlements under Paragraph 11.2 hereof shall be the first to spill from Stewart Mountain Dam on the Salt River and Bartlett Dam on the Verde River; the entitlements of the City of Phoenix and SRPMIC will spill in pro rata amounts. The SRPMIC temporary storage entitlement for Kent Decree water under Paragraph 7.4 hereof shall spill from Stewart Mountain Dam on the Salt River after the storage entitlements provided in Paragraph 11.2 hereof. All other storage entitlements in SRP reservoirs on the Salt and Verde Rivers shall spill after the entitlements described in Paragraphs 11.2 and 7.4 hereof.

21.10 Governing Law - This Agreement will be construed in accordance with the laws of the State of Arizona and applicable federal law. Nothing contained herein waives the right of the United States or the SRPMIC to object to the jurisdiction of the courts of the State of Arizona to adjudicate any disputes arising under this Agreement.

21.11 Succession - This Agreement shall inure to the benefit of and be binding upon the successors of the parties hereto.

. . .

21.12 Effect on CAP Allocations and Nature of Water for Underground Storage and Recovery Purposes - The Secretary and the State of Arizona recognize and agree that the water to be made available to the Cities pursuant to Paragraphs 10.3 (conversion rights and potential water marketed by FMIC), 11.0 (RID Exchange water), 12.2 (Cities' River Water Exchange), and 19.0 (SRPMIC lease) hereof constitute water resources received by such Cities in replacement of existing water resources and in good faith settlement of litigation of SRPMIC water claims. The receipt of or entitlement to water from these sources shall not be counted in any allocation or reallocation of the CAP supply. It is the understanding of the parties hereto that Exhibits "3.h.1" through "3.h.7" hereto and Exhibits "3.m.1" through "3.m.7" hereto are not water service subcontracts issued under the Secretary's decision allocating CAP water which was published in the Federal Register on March 24, 1983, at 48 Fed. Reg. 12446 et seq.

21.13 Destruction of Facilities - Several of the sources of water described in Paragraphs 6.1 and 6.2 hereof are dependent upon the existence of conservation and storage facilities, as well as transmission facilities, to deliver such water to SRPMIC. The destruction of any of these facilities by any cause shall not permanently extinguish SRPMIC's right to receive water otherwise made available by the affected facility; however, such destruction may relieve the parties of the obligation to deliver such water to SRPMIC until the affected facility is repaired or replaced or other suitable facilities have been agreed to by the principal parties in interest as hereinafter provided. Any party responsible for repairing or replacing an affected facility under other contractual arrangements shall have that same obligation under this Agreement. In the event no party has such an obligation, all of the parties, including the

United States, shall use all reasonable efforts to provide a permanent equitable substitute source for the affected water supply in a manner consistent with the parties' respective obligations under this Agreement. This Paragraph 21.13 shall not apply to CAWCD.

21.14 Participation of CAWCD. The parties acknowledge that CAWCD's participation in this Agreement is based upon the Statement of Policies and Principles adopted by its Board of Directors on March 3, 1988, a copy of which is attached hereto as Exhibit "21.14."

21.15 Contingent on Appropriation of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this Agreement shall be contingent upon appropriation of funds therefor. No liability shall accrue to the United States in case funds are not appropriated.

21.16 Officials Not to Benefit. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

21.17 Miscellaneous Provisions

21.17.a Counterparts - This Agreement may be executed in duplicate originals, each of which shall constitute an original Agreement.

21.17.b Notices - Any notice to be given hereunder shall have been properly given when received by the officer or manager designated herein, or when

deposited in the United States mail in an Arizona or Washington, D.C., post office, certified or registered, postage prepaid, addressed as follows:

As to the United States of America:	Secretary of the Interior Department of the Interior Washington, D.C.
	Area Director Phoenix Area Office Bureau of Indian Affairs P.O. Box 10 Phoenix, Arizona 85001
	Regional Director Bureau of Reclamation Lower Colorado Region P.O. Box 427 Boulder City, Nevada 89005
As to the State of Arizona:	Office of the Governor 1700 West Washington Phoenix, Arizona 85007
As to SRPMIC:	Salt River Pima Maricopa Indian Community Route 1, Box 216 Scottsdale, Arizona 85256 Attn: Community Manager
As to the CAWCD:	Central Arizona Water Conservation District 23636 North Seventh Street Phoenix, Arizona 85024 Attn: General Manager
As to the SRP:	Salt River Project P.O. Box 52025 Phoenix, Arizona 85072-2025 Attn: General Manager
As to the RWCD:	Roosevelt Water Conservation District P.O. Box 168 Higley, Arizona 85236 Attn: General Manager

. . .

. . .

As to the RID:	Roosevelt Irrigation District P.O. Box 95 Buckeye, Arizona 85326 Attn: Superintendent
As to the City of Phoenix:	City of Phoenix 251 West Washington Phoenix, Arizona Attn: City Manager
As to the City of Scottsdale:	City of Scottsdale 3939 Civic Center Plaza Scottsdale, Arizona 85251 Attn: City Manager
As to the City of Glendale:	City of Glendale 5850 West Glendale Avenue Glendale, Arizona 85301 Attn: City Manager
As to the City of Mesa:	City of Mesa 55 North Center Street P.O. Box 1466 Mesa, Arizona 85201 Attn: City Manager
As to the City of Tempe:	City of Tempe 31 East 5th Street Tempe, Arizona 85281 Attn: City Manager
As to the City of Chandler:	City of Chandler 25 South Arizona Place Chandler, Arizona 85225 Attn: City Manager
As to the Town of Gilbert:	Town of Gilbert 119 North Gilbert Road Gilbert, Arizona 85234 Attn: Town Manager

or addressed to such other address as the party to receive such notice shall have designated by written notice given as required by this Paragraph 21.17.b.

. . .

. . .

. . .

IN WITNESS WHEREOF, the parties have executed this Agreement dated as of the day and year first above written.

THE UNITED STATES OF AMERICA

By: _____
Secretary of the Interior

THE STATE OF ARIZONA

Attest: _____
Secretary of State

By: _____
Governor

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Attest: _____
Secretary

By: _____
President

Approved as to Form: _____
General Counsel

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

Attest: _____
Secretary

By: _____
President

Approved as to Form: _____

SALT RIVER VALLEY WATER USERS' ASSOCIATION

Attest: _____
Its SECRETARY

By: _____
Its PRESIDENT

. . .

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

Attest: _____
Its ~~SECRETARY~~

By: _____
Its ~~PRESIDENT~~

ROOSEVELT WATER CONSERVATION DISTRICT

Attest: _____
Secretary

By: _____
President

Approved as to Form: _____

ROOSEVELT IRRIGATION DISTRICT

Attest: _____
Secretary

By: _____
~~President~~ Board Member

Approved as to Form: _____

CITY OF PHOENIX, Marvin A. Andrews, City Manager

Attest: _____
Clerk

By: _____

Approved as to Form: _____
~~ACTING~~ City Attorney

_____
Mayor, City of Phoenix

. . .

. . .

. . .

. . .

. . .

CITY OF SCOTTSDALE

Attest: _____
City Clerk

By: _____
Mayor

Approved as to Form: _____
City Attorney

CITY OF GLENDALE

Attest: _____
Clerk

By: _____
Mayor

Approved as to Form: _____
City Attorney

CITY OF MESA

Attest: _____
Clerk

By: _____
City Manager

Approved as to Form: _____
City Attorney

CITY OF TEMPE

Attest: _____
Clerk

By: _____
Mayor

Approved as to Form: _____
City Attorney

. . .

. . .

. . .

CITY OF CHANDLER

Attest: Cleora Ellsworth
Clerk, Acting

By: _____
Mayor

Approved as to Form: _____
City Attorney

TOWN OF GILBERT

Attest: _____
Clerk

By: _____
Mayor

Approved as to Form: _____
City Attorney

EXHIBITS TO AGREEMENT

EXHIBIT "2.17"

Map of SRPMIC Reservation

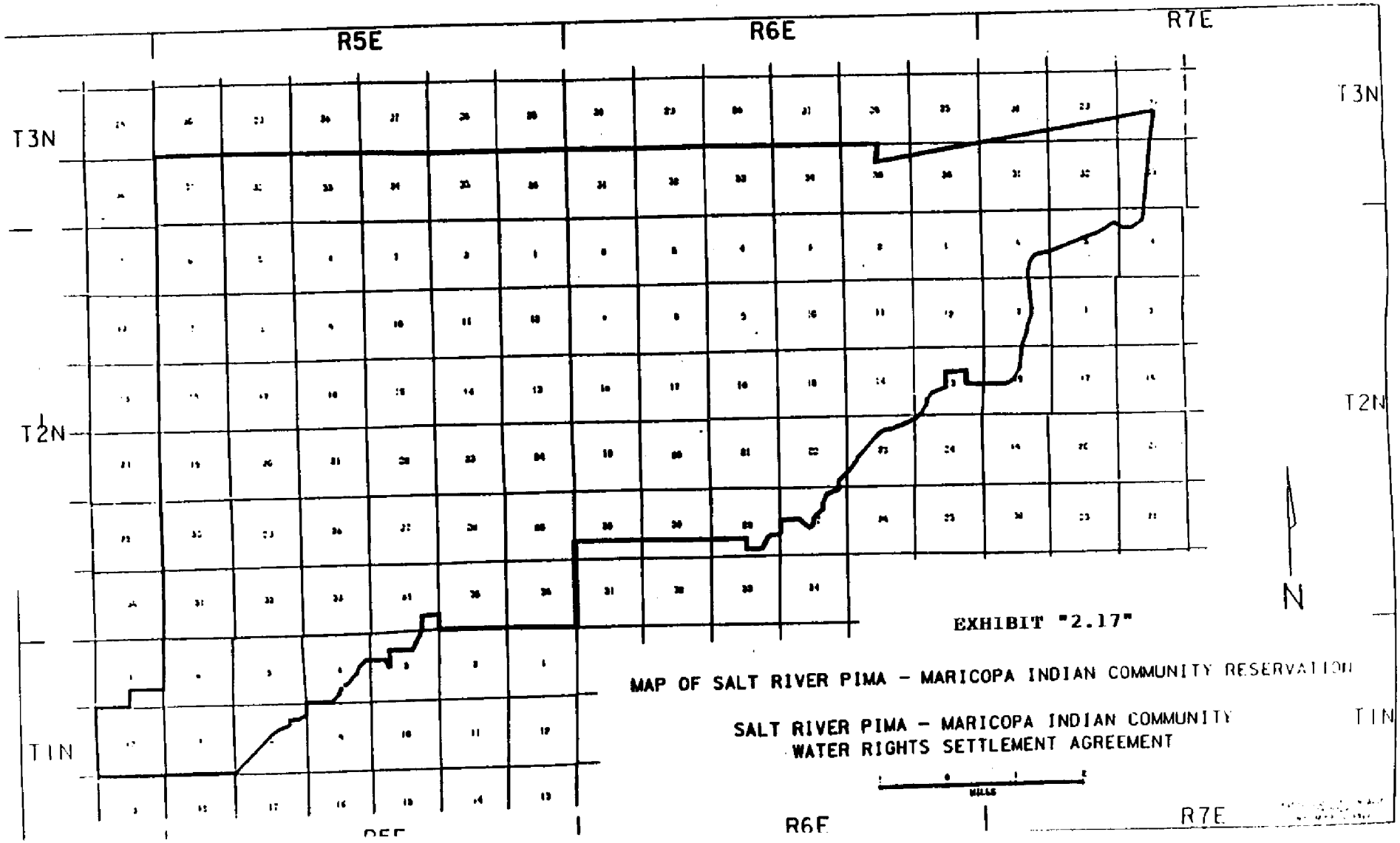
R5E
R6E
R7E
T3N
T2N
T1N
N
EXHIBIT "2.17"
MAP OF SALT RIVER PIMA - MARICOPA INDIAN COMMUNITY RESERVATION
SALT RIVER PIMA - MARICOPA INDIAN COMMUNITY
WATER RIGHTS SETTLEMENT AGREEMENT
MILES
R6E
R7E

EXHIBIT "3.a."

Salt River Pima-Maricopa Indian Community v. United States, et al.

CIV 82-745 PHX RGS

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, Plaintiff, v. UNITED STATES OF AMERICA, et al., Defendants.	No. CIV-82-745-PHX RGS STIPULATION FOR DISMISSAL WITH PREJUDICE

The plaintiff and the defendants advise the Court that the plaintiff has entered into an agreement with major water users in the Salt River Valley which compromises and resolves all of the claims asserted in this litigation. The parties to that agreement are specifically required by its terms to bring about the dismissal of this litigation with prejudice. Accordingly the parties stipulate to the entry of an order dismissing all of the claims asserted in the First Amended Complaint with prejudice, the parties to bear their own costs and attorneys' fees.

Dated this _____ day of _____, 19__.

United States of America

By: _____
Stephen M. McNamee
Arizona Bar #002370
United States Attorney
Department of Justice
George William Sherk

Shea & Wilks

By: _____
Philip J. Shea
Arizona Bar #001183
Attorneys for the Plaintiff

DUPLICATE

. . .

Jennings, Strouss & Salmon

By: _____
John B. Weldon
Arizona Bar #003701
Attorneys for Salt River Agricultural Improvement District and Salt River Valley Water Users Association

Bill Stephens, P.C.

By: _____
Bradford T. Brown
Arizona Bar #009034
Attorney for the Cities of Phoenix, Tempe, Glendale, Scottsdale and Mesa, and the Town of Youngtown

Burch & Cracchiolo, P.C.

By: _____
Edwin C. Bull
Arizona Bar #006306
Attorneys for Roosevelt Irrigation District

Snell & Wilmer

By: _____
John J. Bouma
Arizona Bar #011808
Daniel J. McAuliffe
Arizona Bar #003435
Attorneys for Arizona Public Service Company, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company, Department of Water and Power of the City of Los Angeles and Southern California Public Power Authority

Ryley, Carlock & Applewhite

By: _____
Michael J. Brophy
Arizona Bar #004952
Attorneys for Roosevelt Water Conservation District

DUPLICATE

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, Plaintiff, v. UNITED STATES OF AMERICA, et al., Defendants.	No. CIV-82-745-PHX RGS ORDER OF DISMISSAL WITH PREJUDICE

DUPLICATE

The Court has considered the stipulation of the parties for an order dismissing the action with prejudice, the parties to bear their own costs, and it appearing that there is good cause to grant the relief as stipulated, it is

ORDERED that the First Amended Complaint is dismissed with prejudice and the parties will bear their own costs.

Done on this _____ day of _____, 19__.

_____
Hon. Roger G. Strand
Judge of the District Court

EXHIBIT "3.b."

Salt River Pima-Maricopa Indian Community v. H. S. Aguilar, et al.

CIV 82-2162 PHX PGR

DUPLICATE

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, Plaintiff, v. H. S. AGUILAR, et al., Defendants.	No. CIV-82-2162-PHX PGR NOTICE OF DISMISSAL WITH PREJUDICE AND MOTION AND NOTICE FOR ORDER OF DISMISSAL

The plaintiff dismisses its claims with prejudice pursuant to Rule 41(a)1, against all defendants who have not served an answer or a motion for summary judgment.

To all defendants who have served an answer or a motion for summary judgment, please take notice that the plaintiff will appear before the Court at Room ____ of the Federal Building at 230 North First Avenue, Phoenix, Arizona, on the ____ day of _____, 19__, to move for an order pursuant to Rule 41(a)2, Federal Rules of Civil Procedure, dismissing this action with prejudice, the parties to bear their own costs, on the ground that the plaintiff has entered into an agreement with various major water users in the Salt River Valley which resolves all of the . . .

plaintiff's claims and which requires the plaintiff to secure the dismissal of this action.

Dated this ____ day of _____, 19__.

SHEA & WILKS

By _____
Philip J. Shea
Arizona Bar #001183
114 W. Adams, #200
Phoenix, AZ 85003

[This Notice and Motion will be accompanied by a certificate of service upon all persons who have made appearances in this action as of the time certificate of service is made.]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, Plaintiff, v. H. S. AGUILAR, et al., Defendants.	No. CIV-82-2162-PHX PGR ORDER OF DISMISSAL WITH PREJUDICE

DUPLICATE

The plaintiff's motion for an order dismissing this action with prejudice came on for hearing on _____, 19__. The Court finds that notice of the motion was timely made on all defendants who have appeared in this action and that the claims against defendants who have not appeared have been dismissed with prejudice pursuant to Rule 41(a)1, Federal Rules of Civil Procedure. Upon consideration of the motion and responses and matters presented at the hearing the Court finds good cause for granting the plaintiff's motion. It is therefore

ORDERED that the complaint is dismissed with prejudice and the parties shall bear their own costs.

. . .

. . .

Done on this ____ day of _____, 19__.

DUPLICATE

_____
Hon. Paul G. Rosenblatt
District Court Judge

EXHIBIT "3.c."

United States of America on Behalf of
the Salt River Pima-Maricopa Indian Community,
et al., v. City of Phoenix, et al.

CIV. 82-2173-PHX WPC

Stephen M. McNamee
United States Attorney
230 N. First Avenue
Phoenix, AZ 85025
Tel: 602-261-3921

DUPLICATE

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, on behalf of the SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, Plaintiff, v. CITY OF PHOENIX, et al., Defendants.	No. CIV-82-2173-PHX WPC NOTICE OF DISMISSAL WITH PREJUDICE

The plaintiff advises the Court that its claims have been resolved under the terms of an agreement between the Salt River Pima-Maricopa Indian Community and major water users in the Salt River Valley. This agreement requires that this action be dismissed with prejudice. Summons and complaint have not been served on any of the defendants and no defendant has served an answer or motion for summary judgment.

Accordingly, the plaintiff gives notice pursuant to Rule 41(a)(1), Federal Rules of Civil Procedure, that the complaint is . . .

dismissed with prejudice, all parties to bear their own costs and attorneys' fees.

Dated this 21st day of November, 1987.

UNITED STATES OF AMERICA

DUPLICATE

By: Steven E. Carroll

Steven E. Carroll
California Bar #55030
Department of Justice

EXHIBIT "3.d."

Town of Gilbert v. The Roosevelt Water Conservation District, et al.

CIV 85-2600 PHX CAM

DUPLICATE

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

TOWN OF GILBERT, ARIZONA, a Municipal Corporation, Plaintiff, v. THE ROOSEVELT WATER CONSERVATION DISTRICT, a body politic; THE UNITED STATES OF AMERICA; DONALD HODEL, Secretary of the United States Department of Interior, THE UNITED STATES DEPARTMENT OF INTERIOR; EDWARD M. HALLENBECK, Regional Director of the Lower Colorado Region of the United States Bureau of Reclamation; THE UNITED STATES BUREAU OF RECLAMATION; THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a body politic; KATHLEEN FERRIS, Director of the Arizona Department of Water Resources; THE ARIZONA DEPARTMENT OF WATER RESOURCES, an agency of the State of Arizona, Defendants.	CAUSE NO. CIV 85-2600 PHX CAM STIPULATION AND JOINT MOTION FOR JOINDER OF ADDITIONAL PARTIES PLAINTIFF, WAIVER OF AMENDED COMPLAINT AND TIME WITHIN WHICH TO ANSWER, INCORPORATION OF PRIOR ANSWERS TO THE COMPLAINT AND ORDER

The parties in the above-entitled matter, together with the City of Mesa, Arizona, a municipal corporation and body politic

of the State of Arizona ("Mesa"), and the Town of Chandler, Arizona, a municipal corporation and a body politic of the State of Arizona ("Chandler"), hereby stipulate and agree, in accordance with Rules 15 and 19, Federal Rules of Civil Procedure, that Mesa and Chandler may be joined as parties Plaintiff to the above-entitled action;

FURTHER, the parties stipulate upon joinder of Mesa and Chandler as parties Plaintiff, that the original Complaint, as amended, may and shall be deemed as the Complaint of Mesa and Chandler, and Mesa and Chandler stipulate and agree that the answers of the Defendants may and shall serve as answers to the Complaint of Mesa and Chandler;

FURTHER, the parties stipulate and agree that Mesa and Chandler shall be bound by the Order of this Court entered September 25, 1986, in the above-entitled action.

DATED this ____ day of _____, 19__.

MARTINEZ & CURTIS, P.C.

By _____
Jay M. Martinez, Esq.
Arizona Bar #002367
2712 North Seventh Street
Phoenix, Arizona 85006-1003
Attorneys for Plaintiff

CITY OF MESA, ARIZONA

By _____
Bradford T. Brown, Esq.
Arizona Bar #009034
55 North Center
Post Office Box 1466
Mesa, Arizona 85201
Attorneys for City of Mesa

DUPLICATE

CITY OF CHANDLER, ARIZONA

By Karen S. Cayford, for
Maureen R. George, Esq.
Arizona Bar #004782
100 East Buffalo
Chandler, Arizona 85224
Attorneys for City of Chandler

ARIZONA DEPARTMENT OF WATER RESOURCES

By Barbara A. Markham
~~Scott D. Larmore, Esq.~~
~~Arizona Bar #005737~~
Barbara A. Markham, Esq.
Arizona Bar #009205
99 East Virginia
Phoenix, Arizona 85004
Attorneys for Defendant DWR and
N. W. Plummer, Its Director

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By Ralph E. Hunsaker
Ralph E. Hunsaker, Esq.
Arizona Bar #001409
One East Camelback Road, Suite 1100
Phoenix, Arizona 85012-1656
Attorneys for Defendant CAWCD

By Douglas K. Miller
Douglas K. Miller, Esq.
Arizona Bar #005264
23636 N. Seventh Street
Phoenix, Arizona 85024
Attorney for Defendant CAWCD

. . .

DEPARTMENT OF JUSTICE

By _____
George William Sherk
Land and National Resources
Division
Benjamin Franklin Station
P. O. Box 7415
Washington, D.C. 20044-7415
Attorneys for Federal Defendants

DUPLICATE

RYLEY, CARLOCK & APPLEWHITE, P.A.

By _____
Michael J. Brophy, Esq.
Arizona Bar #004952
101 North First Avenue, 26th Floor
Phoenix, Arizona 85003-1973
Attorneys for Defendant Roosevelt
Water Conservation District

. . .

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

TOWN OF GILBERT, ARIZONA, a Municipal Corporation, Plaintiff, v. THE ROOSEVELT WATER CONSERVATION DISTRICT, a body politic; THE UNITED STATES OF AMERICA; DONALD HODEL, Secretary of the United States Department of Interior; THE UNITED STATES DEPARTMENT OF INTERIOR; EDWARD M. HALLENBECK, Regional Director of the Lower Colorado Region of the United States Bureau of Reclamation; THE UNITED STATES BUREAU OF RECLAMATION; THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a body politic; KATHLEEN FERRIS, Director of the Arizona Department of Water Resources; THE ARIZONA DEPARTMENT OF WATER RESOURCES, an agency of the State of Arizona, Defendants.	CAUSE NO. CIV 85-2600 PHX CAM ORDER

DUPLICATE

Pursuant to Stipulation and Joint Motion, and Good Cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the City of Mesa, Arizona (hereinafter "Mesa"), and the Town of Chandler, Arizona (hereinafter "Chandler"), shall be joined and added as parties Plaintiff to the above-entitled action; upon joinder of Mesa and Chandler, the original Complaint, as amended, shall be deemed the Complaint of Mesa and Chandler; the Answers of Defendants shall serve as Answers to the Complaint of Mesa and Chandler and Mesa and Chandler will be bound by the Order of this Court, entered on September 25, 1986, in the above-entitled action.

DONE IN OPEN COURT _____.

DUPLICATE

_____
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

TOWN OF GILBERT, ARIZONA, a Municipal Corporation, Plaintiff, v. THE ROOSEVELT WATER CONSERVATION DISTRICT, a body politic; THE UNITED STATES OF AMERICA; DONALD HODEL, Secretary of the United States Department of Interior; THE UNITED STATES DEPARTMENT OF INTERIOR; EDWARD M. HALLENBECK, Regional Director of the Lower Colorado Region of the United States Bureau of Reclamation; THE UNITED STATES BUREAU OF RECLAMATION; THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a body politic; KATHLEEN FERRIS, Director of the Arizona Department of Water Resources; THE ARIZONA DEPARTMENT OF WATER RESOURCES, an agency of the State of Arizona, Defendants.	CAUSE NO. CIV 85-2600 PHX CAM STIPULATION FOR DISMISSAL WITH PREJUDICE

DUPLICATE

This matter having been fully and completely resolved among the parties, it is hereby stipulated between the Plaintiffs

and the Defendants, through their attorneys undersigned, that this matter may be dismissed with prejudice, the parties to bear their own costs and attorneys' fees.

DATED this _____ day of _____, 19__.

MARTINEZ & CURTIS, P.C.

By _____
Jay M. Martinez, Esq.
Arizona Bar #002367
2712 North Seventh Street
Phoenix, Arizona 85006-1003
Attorneys for Plaintiff

DUPLICATE

CITY OF MESA, ARIZONA

By _____
Bradford T. Brown, Esq.
Arizona Bar #009034
55 North Center
Post Office Box 1466
Mesa, Arizona 85201
Attorneys for City of Mesa

CITY OF CHANDLER, ARIZONA

By Karen S. Cayford, for
Maureen R. George, Esq.
Arizona Bar #004782
100 East Buffalo
Chandler, Arizona 85224
Attorneys for City of Chandler

ARIZONA DEPARTMENT OF WATER RESOURCE

By _____
~~Scott D. Larmore, Esq.~~
~~Arizona Bar #005737~~
Barbara A. Markham, Esq.
Arizona Bar #009205
99 East Virginia
Phoenix, Arizona 85004
Attorneys for Defendant DWR and
N. W. Plummer, Its Director

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By _____
Ralph E. Hunsaker, Esq.
Arizona Bar #001409
O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears
One East Camelback Road, Suite 110
Phoenix, Arizona 85012-1656

By _____
Douglas R. Miller, Esq.
Arizona Bar #005264
General Counsel
Central Arizona Water Conservation District
23636 N. Seventh Street
Phoenix, Arizona 85024

Attorneys for Defendant CAWCD

DUPLICATE

DEPARTMENT OF JUSTICE

By _____
George William Sherk
Land and Natural Resources Division
Benjamin Franklin Station
P. O. Box 7415
Washington, D.C. 20044-7415
Attorneys for Federal Defendants

RYLEY, CARLOCK & APPLEWHITE, P.A.

By _____
Michael J. Brophy, Esq.
Arizona Bar #004952
101 North First Avenue, 26th Floor
Phoenix, Arizona 85003-1973
Attorneys for Defendant Roosevelt Water Conservation District

. . .

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

TOWN OF GILBERT, ARIZONA, a Municipal Corporation, Plaintiff, v. THE ROOSEVELT WATER CONSERVATION DISTRICT, a body politic; THE UNITED STATES OF AMERICA; DONALD HODEL, Secretary of the United States Department of Interior; THE UNITED STATES DEPARTMENT OF INTERIOR; EDWARD M. HALLENBECK, Regional Director of the Lower Colorado Region of the United States Bureau of Reclamation; THE UNITED STATES BUREAU OF RECLAMATION; THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a body politic; KATHLEEN FERRIS, Director of the Arizona Department of Water Resources; THE ARIZONA DEPARTMENT OF WATER RESOURCES, an agency of the State of Arizona, Defendants.	CAUSE NO. CIV 85-2600 PHX CAM ORDER OF DISMISSAL

DUPLICATE

Pursuant to Stipulation, and Good Cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-entitled action be dismissed with prejudice, the parties to bear their own costs and attorneys' fees.

DONE IN OPEN COURT _____.

_____
United States District Judge

DUPLICATE

EXHIBIT "3.e."

Gila River Adjudication

SPECIMEN

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE	W-1; W-2; W-3; W-4 STIPULATION (Assigned to The Honorable Stanley Z. Goodfarb)

THIS STIPULATION, dated as of _____, 19__, is entered into among the United States of America; the Salt River Pima-Maricopa Indian Community (SRPMIC); the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert; and the Central Arizona Water Conservation District.

1.0 RECITALS

1.1 Recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to SRPMIC's access to water, prolong uncertainty as to the availability of

water supplies and seriously impair the long-term economic planning and development of all parties, SRPMIC and neighboring non-Indian communities have sought to settle their disputes and reduce the burdens of litigation.

1.2 The representatives of the United States of America, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert, Arizona, and the Central Arizona Water Conservation District have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members, to finally resolve pending litigation on water rights and damage claims, and to seek funding for implementation of the settlement.

1.3 It is recognized by all parties to this Stipulation that they must recognize long-standing vested water rights arising under federal law, state law, the Kent Decree, and through contractual relationships with the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District and the United States. Settlement of these issues must also accommodate the imperative need of the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler, and the Town of Gilbert to satisfy increasing municipal and industrial water demands.

. . .

1.4 It is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation.

1.5 The objective of this settlement and Stipulation is to resolve all outstanding water-related litigation and settle once and for always the water rights of the Salt River Pima-Maricopa Indian Community, and its members, and the owners of allotted lands within the Salt River Pima-Maricopa Indian Reservation based upon Federal, State and other laws by providing to SRPMIC sufficient water from various sources to irrigate 27,200 acres of agricultural land within the Salt River Pima-Maricopa Indian Reservation, 14,500 acres of which are located south of the Arizona Canal and within the exterior boundaries of the Salt River Reservoir District (SRRD) and 12,700 acres of which are located north of the Arizona Canal and outside the exterior boundaries of the SRRD.

1.6 The complete Agreement (the Agreement), including all related and incorporated agreements, between the undersigned parties is attached hereto as Exhibit A. This Stipulation is not intended to supersede any term of the Agreement. The Agreement is intended to be enforceable among the undersigned parties in pursuing their claims in these proceedings.

NOW THEREFORE, in consideration of the premises and of the promises and agreements hereinafter set forth, the parties hereto stipulate and agree as follows:

2.0 DEFINITIONS

This Stipulation will employ abbreviated terms which will have the meanings stated below.

2.1 "Additional Active Conservation Capacity" shall mean the difference between the Existing Active Conservation Capacity in Roosevelt Reservoir prior to modification of Roosevelt Dam and the Active Conservation Capacity after modification of Roosevelt Dam; and "Active Conservation Capacity" shall mean the reservoir capacity assigned to regulate reservoir outflow for irrigation, power, and M&I use; and "Existing Active Conservation Capacity" shall mean the Active Conservation Capacity in Roosevelt Reservoir prior to modification of Roosevelt Dam. The modifications referred to in this definition are modifications made as part of Plan 6.

2.2 "The Agreement" shall mean the agreement entered into between the parties to this stipulation dated as of February 12, 1988, concerning the matters recited in this Stipulation.

2.3 "Allottees" shall mean owners of allotted land within the SRPMIC Reservation.

2.4 "Bartlett Dam Agreement" shall mean the agreement between the United States and the Salt River Valley Water Users' Association dated June 3, 1935, relating to Verde River storage works.

2.5 "CAP" shall mean the Central Arizona Project, a reclamation project constructed by the United States of America pursuant to the Colorado River Basin Project Act of September 30, 1968, 82 Stat. 885, as amended.

. . .

2.6 "CAWCD" shall mean the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, which is the Contractor under a contract with the United States of America, dated December 15, 1972 (Contract No. 14-06-W-245), for the delivery of water and repayment of costs of the Central Arizona Project, as amended.

2.7 "Effluent" shall mean water which, after being withdrawn as groundwater or diverted as surface water, has been used for domestic, municipal or industrial purposes and which is available for reuse for any purpose, whether or not the water has been treated to improve its quality.

2.8 "Kent Decree" shall mean the decree dated March 1, 1910, entered in Patrick T. Hurley v. Charles F. Abbott, et al., Cause Number 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

2.9 "Plan 6" shall mean Plan 6 for the Regulatory Storage Division of the CAP which for the purposes of this Stipulation is limited to modifications to Roosevelt Dam on the Salt River.

2.10 "Plan 6 Agreement" shall mean the agreement among the United States; the CAWCD; the Flood Control District of Maricopa County; the SRP; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the State of Arizona; and the City of Tucson, for funding of Plan 6 facilities of the CAP and for other purposes, dated April 15, 1986, and any amendments or supplements thereto.

2.11 "RID" shall mean the Roosevelt Irrigation District, an irrigation district organized under the laws of the State of Arizona.

2.12 "RWCD" shall mean the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

2.13 "Secretary" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative.

2.14 "SRP" shall mean the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

2.15 "SRPMIC" shall mean the Salt River Pima-Maricopa Indian Community, a community of Pima and Maricopa Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987, and duly recognized by the Secretary.

2.16 "SRPMIC Reservation" shall mean that area of land shown on Exhibit "2.17" to the Agreement.

2.17 "SRRD" shall mean the Salt River Reservoir District as defined, on the effective date of the Agreement, in Article IV, Section 3, of the Articles of Incorporation of the Salt River Valley Water Users' Association.

2.18 "Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988" or "The Act" shall mean Public Law 100-512, October 20, 1988, 102 Stat. 2549.

. . .

3.0 STIPULATIONS AND AGREEMENTS

Pursuant to the Agreement between the parties, additional and subsidiary agreements in the form of contracts, stipulations for settlement of litigation and the entry of consent decrees and waivers of claims have been prepared and are incorporated in the Agreement.

4.0 TOTAL WATER REQUIREMENT AND LIMITATION

The SRPMIC Reservation land to be irrigated with the water provided by this Stipulation and the Agreement will be served with new modern delivery facilities. Utilizing a water duty of 4.5 acre-feet per acre per year for the 14,500 acres located within the exterior boundaries of the SRRD and for the 12,700 acres located north of the Arizona Canal, the maximum annual water delivery requirement to SRPMIC, with the exception of "spill water" described in Paragraph 14.0 of the Agreement, measured at the turnouts from the CAP Granite Reef Aqueduct, turnouts from SRP main canals, and pump outlets from groundwater wells on the SRPMIC's reservation will be 65,250 acre-feet per year for the SRPMIC Reservation lands within the exterior boundaries of the SRRD and 57,150 acre-feet per year for the SRPMIC Reservation lands north of the Arizona Canal.

5.0 SOURCES OF WATER

Water for the settlement will be provided from the sources and in the quantities as outlined in the tables below and as further defined in Paragraphs 7.0, 8.0, 9.0, 10.0, 11.0, 12.0 and 13.0 of the Agreement.

5.1 For irrigation or other use on 14,500 acres of SRPMIC Reservation lands located south of the Arizona Canal, and within the exterior boundaries of the SRRD:

Source	Estimated Quantity, (acre-feet per year)	Reference Paragraph from the Agreement
Kent Decree water	18,776	7.0
Stored water from SRP	9,074	8.0
Cities' river water exchange for Colorado River water	20,000	12.0
Groundwater pumped by SRPMIC (long term average)	17,400	13.0
Sub-Total	65,250	

For irrigation or other use on SRPMIC Reservation lands located north or south of the Arizona Canal:

Source	Estimated Quantity, (acre-feet per year)	Reference Paragraph from the Agreement
CAP contractual entitlement	13,300	
Bartlett Dam Agreement water	20,000	9.0
RWCD	8,000	10.0
RID, City of Phoenix, SRP exchange water	10,000	11.0
Groundwater pumped by SRPMIC (long term avg.)	5,850	13.0
Sub-Total	57,150	
TOTAL	122,400	

5.3 Effluent developed on the SRPMIC Reservation from the sources listed in Paragraphs 6.1 and 6.2 of the Agreement shall be used for such purposes as SRPMIC may determine and shall not be included in the quantity restrictions of this Stipulation or the Agreement.

5.4 The priority of the water delivered to SRPMIC from the sources listed in Paragraphs 5.1 and 5.2 hereof shall be the priority for those sources as determined in the Gila Adjudication.

6.0 KENT DECREE WATER

6.1 In order that SRPMIC may use more fully its Kent Decree water entitlement, the United States will designate for use by the SRPMIC for storage of Kent Decree Water 7,000 acre-feet of the Additional Active Conservation Capacity in accordance with Paragraph 7.1 of the Agreement.

6.2 The Additional Active Conservation Capacity designated in Paragraph 7.1 of the Agreement will be for seasonal re-regulation only (no annual carry over past October 1) in accordance with Paragraph 7.2 of the Agreement.

6.3 SRP will provide temporary storage for the 7,000 acre-feet referred to in Paragraph 7.1 of the Agreement in its existing reservoirs on the Salt River for the SRPMIC Kent Decree Water until the earlier of: (1) The construction of the Additional Active Conservation Capacity is completed; (2) a declaration is made by the United States that such capacity will not be constructed, or (3) December 31, 2005; provided, however, that this temporary storage entitlement shall always be subject to spill as provided in

Paragraph 21.9 of the Agreement and that monthly evaporation will be charged at the rate of one-half of one percent of the Kent Decree stored water balance at the end of each month.

6.4 In the event of the occurrence of either condition described in Paragraph 6.3(2) or (3) of the Stipulation or 7.4(b) or (c) of the Agreement, and to satisfy the requirements of Paragraph 7.1 of the Agreement, the United States will provide at its cost new water in accordance with Paragraph 7.5 of the Agreement.

6.5 The Kent Decree water will be used only on SRPMIC Reservation land south of the Arizona Canal and inside the exterior boundary of the SRRD.

7.0 ADDITIONAL SRP STORED WATER

7.1 "Stored Water" is defined as that amount of water delivered to SRPMIC by SRP from SRP reservoirs up to 9,074 acre-feet per year pursuant to Paragraphs 6.1 and 8.2 of the Agreement.

"Additional Stored Water" is defined as that amount of SRP water delivered to SRPMIC by SRP from SRP reservoirs in excess of 9,074 acre-feet per year pursuant to Paragraphs 8.2 through 8.7 of the Agreement.

7.2 SRP will deliver annually Stored Water to SRPMIC at the Arizona Canal or South Canal as ordered by SRPMIC in accordance with the provisions of Paragraph 8.2 of the Agreement.

7.3 SRPMIC shall satisfy the conditions to receiving Additional Stored Water outlined in Paragraphs 8.3 through 8.5 of the Agreement and shall receive no more Additional Stored Water than the amount stated in Paragraphs 8.4 through 8.7 of the Agreement.

8.0 RWCD WATER TRANSFERRED TO SRPMIC

8.1 During the term and extended term of the agreements referred to in Paragraph 10.1 of the Agreement, RWCD hereby directs SRP to deliver to SRPMIC 8,000 acre-feet per year from RWCD's entitlement as defined in Paragraphs 10.1 and 10.2 of the Agreement and in accordance with the terms of Paragraph 10.5 of the Agreement.

8.2 RWCD's direction for the delivery of water to SRPMIC pursuant to the terms of Paragraph 10.5 of the Agreement shall be binding upon its successors and assigns in accordance with Paragraph 10.6 of the Agreement.

9.0 CITIES' RIVER WATER EXCHANGE

9.1 During the term of the contracts referred to in Paragraph 12.6 of the Agreement, SRP shall deliver to SRPMIC, as provided in Paragraphs 12.7 through 12.12 of the Agreement, up to 20,000 acre-feet of surface water annually for use only on the SRPMIC Reservation land south of the Arizona Canal and within the exterior boundaries of the SRRD.

10.0 SPILL WATER

The parties to this Stipulation and the Agreement recognize that SRP and SRPMIC, as well as other water users, have asserted appropriative claims to the flood flow waters from the Salt and Verde Rivers in excess of the storage capacities of existing SRP reservoirs on those rivers ("Spill Water"). Although the United States has filed a claim on behalf of SRPMIC for Spill Water, SRP shall prosecute its claim and that of SRPMIC to this

Spill Water in the Gila River Adjudication. Neither the SRPMIC nor the United States shall prosecute a separate claim for this Spill Water in the Gila River Adjudication or in any other administrative or judicial proceeding. The United States on its own behalf and on behalf of SRPMIC shall not challenge any claims to Spill Water in the Gila River Adjudication or in any other administrative or other judicial proceeding. All parties to this Stipulation and the Agreement other than SRPMIC and the United States reserve the right to assert claims to Spill Water, protest the Spill Water claims of SRP and SRPMIC or protest the validity of any appropriation of Spill Water, and/or seek appropriative rights wherein such Spill Water would be stored in Additional Active Conservation Capacity.

11.0 LIMITATIONS ON TRANSPORTATION AND USE OF SRP WATER

11.1 SRPMIC will not transport Kent Decree water, Stored Water, Additional Stored Water, Cities Exchange Water, or groundwater pumped within the boundaries of the SRRD to lands or uses outside that portion of the SRPMIC Reservation within the exterior boundaries of SRRD. Bartlett Dam water will not be transported outside the SRRD except as provided in Paragraph 12.0 of the Agreement.

11.2 Except as provided in Paragraph 19.0 of the Agreement, the water made available from the various sources under the Agreement is solely for the use within the SRPMIC Reservation. There are no restrictions on the purposes for which water may be used within the SRPMIC Reservation.

. . .

12.0 SRPMIC WAIVER OF CLAIMS

12.1 Except as provided in Paragraph 12.2 hereof, SRPMIC, on behalf of itself and its members, shall execute a waiver and release of:

(a) Any and all past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water, and effluent) for lands within the SRPMIC Reservation, from time immemorial to the date of execution of such waiver and release, which SRPMIC may have, or which it may have standing to assert on behalf of its members, against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation or municipal corporation, under the laws of the United States or the State of Arizona; and

(b) Any and all future claims of rights to water (including water rights in groundwater, surface water, and effluent) for lands within the SRPMIC Reservation, from and after the date of execution of such waiver and release, which SRPMIC may have, or which it may have standing to assert on behalf of its members, against the United States, the State of Arizona, and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona; and

(c) All past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water and effluent) for lands outside of the exterior

boundaries of the SRPMIC Reservation based upon aboriginal occupancy by the Pima and Maricopa Indians, which SRPMIC may have, or which it may have standing to assert on behalf of its members, against the United States, the State of Arizona, and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona.

Nothing herein shall prevent SRPMIC from participating with other entities in further activities to augment the water supply available to the Salt River Valley. The waiver and release will be in the form set out in Exhibit "3.o" to the Agreement.

12.2 Notwithstanding the execution by SRPMIC of the waiver and release described in Paragraph 12.1 hereof, SRPMIC, its members, and the United States on their behalf, shall retain the right to assert the following claims:

(a) Any claim for damages to water quality; provided, however, that Paragraph 12.1 hereof shall be construed to bar SRPMIC and its members from asserting any claim for damages to water quality caused by (1) the withdrawal of groundwater in accordance with the Arizona Groundwater Management Act; (2) the parties' performance of their obligations under the Agreement; (3) changes to water quality caused by the delivery or commingling of water delivered from the CAP with any of the water described in paragraph 6.0 of the Agreement; or (4) any combination thereof.

. . .

. . .

(b) Claims against the United States as provided in Section 10 of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 ("the Act").

(c) Claims of water rights or injuries to water rights, other than those based upon aboriginal occupancy by the Pima and Maricopa Indians, for lands outside of the exterior boundaries of the SRPMIC Reservation acquired by SRPMIC or the United States on behalf of SRPMIC subsequent to January 1, 1985.

(d) Claims in the Gila River Adjudication for the enforcement of SRPMIC's water rights as provided for in the Agreement.

(e) Claims against any person for the breach or enforcement of the terms of the Agreement or rights recognized therein.

12.3 Except for actions in the United States Claims Court, the United States and SRPMIC shall dismiss with prejudice all water and power-related litigation pending in Federal or State courts in which SRPMIC is a plaintiff or which has been brought by the United States on behalf of SRPMIC. The dismissals shall be in the form set out in Exhibits "3.a," "3.b," "3.c," and "3.f" of the Agreement.

12.4 Any entitlement to water of any individual member of SRPMIC for allotted lands within the SRPMIC Reservation shall be satisfied out of the water resources provided in the Agreement.

12.5 Except as provided in Section 10(d) of the Act, the United States shall not assert any claims against any person in its own right or on behalf of SRPMIC based upon (1) water rights or

injuries to water rights of SRPMIC, its members or Allottees; or (2) water rights or injuries to water rights held by the United States on behalf of SRPMIC, its members or Allottees.

12.6 The United States and SRPMIC waive their sovereign immunity from suit in Federal District Court in regard to any claim which relates to the interpretation or enforcement of the Agreement.

13.0 CAP WATER LEASE

13.1 The Agreement provides that the Secretary and SRPMIC will amend the SRPMIC CAP contract dated December 11, 1980, for the delivery of 13,300 acre feet of CAP water, to permit the leasing by SRPMIC of all of that CAP entitlement to the Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa and Phoenix and the Town of Gilbert for a term of 99 years from the year 2000. The Agreement further provides the maximum annual amount of water to be used by SRPMIC as provided for in the Agreement will be reduced by the amount of CAP water leased for use outside the SRPMIC reservation.

13.2 The Agreement provides that, except for CAP water, no other water provided to SRPMIC pursuant to the Agreement shall be marketable by SRPMIC.

14.0 OTHER PROVISIONS

14.1 Disclaimer - Nothing in this Stipulation or the Agreement shall be construed as establishing any standard to be used for the quantification of Federal reserved rights, aboriginal claims, or any other Indian claims to water in any judicial or administrative proceeding.

14.2 Effective date of the Stipulation - The Stipulation shall be submitted to the Maricopa County Superior Court for its approval upon the execution of the Agreement by all parties thereto, and upon the execution of the exhibits to the Agreement by all parties indicated on the exhibits. Notwithstanding the Court's approval of the Stipulation, the rights and obligations of the parties under the Agreement shall not accrue or be enforceable until:

(a) The permits required to effect the RID exchange pursuant to Paragraph 11.0 of the Agreement have been granted by December 31, 1991, provided that this condition may be waived by SRPMIC in a writing delivered by SRPMIC to the parties to the Agreement by SRPMIC on or before December 30, 1991.

(b) The acts or events described in Sections 12(a)(1) through 12(a)(6) and in Section 12(a)(8) of the Act have all occurred by December 31, 1991.

14.3 Pursuant to a court ordered and approved procedure, the maximum annual water entitlement of SRPMIC and its members, as specified in the Agreement and this Stipulation, shall become binding and have the full effect of a valid legal judgment as against all persons who were entitled to file a statement of claimant in these consolidated proceedings. However, the quantities of water to be provided from the sources specified in this Stipulation and in the Agreement to satisfy SRPMIC's annual entitlement, as specified in the Agreement and this Stipulation, shall be binding only on the parties to this Stipulation and to the Agreement. Except as among the parties to this Stipulation and to

the Agreement and except as to SRPMIC's annual water entitlement, as specified in the Agreement and this Stipulation, nothing in this Stipulation or in the Agreement shall be construed or interpreted as establishing a right to use water from the Gila River System and Source by any party to this Stipulation or to the Agreement.

14.4 If for any reason this Court fails to approve this Stipulation and Order, this Stipulation shall not bind any of the undersigned parties. If the Court approves this Stipulation and the judgment of this Court is reversed on appeal and no further appeal may be taken, the rights and obligations of the parties shall be as stated in the Agreement.

14.5 Nothing in this Stipulation or the Agreement shall prohibit or restrict any undersigned party from fully pursuing its claims in these consolidated proceedings, consistent with this Stipulation and the Agreement.

14.6 The Court shall direct the entry of final judgment in the form attached hereto because there is no just reason for delay and the partial judgment is properly final pursuant to Rule 54(b), Arizona Rules of Civil Procedure.

14.7 This Stipulation is not intended to supersede any term of the Agreement. In the event any of the terms of this Stipulation shall vary or conflict with any of the terms of the Agreement, the terms of the Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Stipulation as of the day and year first above written.

. . .

THE UNITED STATES OF AMERICA

By: _____
Attorneys for the United
States of America

By: _____
Attorneys for the United
States of America

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Douglas K. Miller
Arizona Bar #005264

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By: _____
Philip J. Shea
Arizona Bar #001183

SALT RIVER VALLEY WATER USERS' ASSOCIATION

By: _____
John B. Weldon, Jr.
Arizona Bar #003701

. . .

. . .

. . .

. . .

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

By: _____
John B. Weldon, Jr.
Arizona Bar #003701

ROOSEVELT WATER CONSERVATION DISTRICT

By: _____
Michael J. Brophy
Arizona Bar #004952

ROOSEVELT IRRIGATION DISTRICT

By: _____
Edwin C. Bull
Arizona Bar #006306

CITY OF PHOENIX, RODERICK G. McDOUGALL, City Attorney

By: _____
M. James Callahan
Arizona Bar #004138
Katherine Ott-Verberg
Arizona Bar #004240
Assistant City Attorneys
251 West Washington, 8th Floor
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Attorneys for the City of Phoenix

CITY OF SCOTTSDALE

By: _____
Barbara R. Goldberg
Arizona Bar #010252

. . .

. . .

CITY OF GLENDALE

By: _____
Jennele M. Morris
Arizona Bar #007043

CITY OF MESA

By: _____
Bradford T. Brown
Arizona Bar #009034

CITY OF TEMPE

By: _____
Bradford T. Brown
Arizona Bar #009034

CITY OF CHANDLER

By: _____
Maureen R. George
Arizona Bar #004782

TOWN OF GILBERT

By: _____
Jay M. Martinez
Arizona Bar #002367

. . .

. . .

. . .

. . .

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE	)	W-1; W-2; W-3; W-4
	)	JUDGMENT

JUDGMENT

The claims asserted herein by the Salt River Pima-Maricopa Indian Community and by the United States of America on behalf of the Community having been resolved by stipulation among the interested parties, this Court having reviewed and considered the substance of said stipulation, and other parties to this action having been given an opportunity to be heard on this matter,

It is Ordered and Adjudged:

That the Court hereby approves and adopts the Stipulation dated _____, as its decree of the rights of the Salt River Pima-Maricopa Indian Community in the waters subject to this proceeding which shall be incorporated into the final decree herein without further order;

. . .

. . .

The Court herein determines that there is no just reason for delay and the partial judgment is properly final pursuant to Rule 54(b), Arizona Rules of Civil Procedure.

Wherefore, the Court directs the entry of judgment, pursuant to the provisions of Arizona Rules of Civil Procedure 54(b).

Dated at Phoenix, Arizona, this ____ day of _____, 19__.

_____

Judge, Superior Court

. . .

EXHIBIT "3.f."

Salt River Pima-Maricopa Indian Community
v. The State of Arizona and Gene Hassell, Acting
Commissioner of the Arizona State Land Department

No. CIV 79-185 PHX

SHEA & WILKS
Philip J. Shea, #1183
114 W. Adams, #200
Phoenix, AZ 85013
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DUPLICATE

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JENNINGS, STROUSS & SALMON
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2 N. Central, #16th Floor
Phoenix, AZ 85004-2393
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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

SALT RIVER PIMA-MARICOPA INDIAN INDIAN COMMUNITY, Plaintiff, -vs- THE STATE OF ARIZONA and GENE HASSELL, Commissioner of the Arizona State Land Department, Defendants, SALT RIVER VALLEY WATER USERS' ASSOCIATION, an Arizona corporation, Intervenor.	CIV 79-185-PHX RGS STIPULATION FOR DISMISSAL WITH PREJUDICE

The parties advise the Court that the claims of the plaintiff have been satisfied and released and accordingly they

. . .

. . .

stipulate to an order dismissing the complaint with prejudice without award of costs or attorneys' fees.

Dated this 19th day of January, 1990.

ROBERT K. CORBIN, Attorney General

By: _____
Assistant Attorney General
Attorney for the Defendants

SHEA & WILKS

By: _____
Attorneys for the Plaintiff

JENNINGS, STROUSS & SALMON

By: _____
Attorneys for Intervenor

DUPLICATE

DUPLICATE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, Plaintiff, -vs- THE STATE OF ARIZONA and GENE HASSELL, Commissioner of the Arizona State Land Department, Defendants, SALT RIVER VALLEY WATER USERS' ASSOCIATION, an Arizona corporation, Intervenor.	CIV 79-185-PHX RGS ORDER OF DISMISSAL WITH PREJUDICE

The Court has been advised that the plaintiff's claims have been satisfied and released and, there being good cause, it is

ORDERED that the complaint is dismissed with prejudice, the parties to bear their own costs and attorneys' fees.

Done on this _____ day of _____, 19__.

Hon. Roger G. Strand
District Court Judge

EXHIBIT "3.g."

Salt River Pima-Maricopa Indian Community
v. Salt River Valley Water Users' Association, et al.,

No. CIV 83-2500-PHX WPC

(Not executed by virtue of
prior dismissal of the litigation)

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, Plaintiff-Appellant, -vs- SALT RIVER VALLEY WATER USERS' ASSOCIATION, an Arizona corporation; and SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an Arizona municipal corporation, Defendants-Appellees.	No. 86-2819 STIPULATION FOR DISMISSAL OF APPEAL (Appeal from District of Arizona Cause No. CIV 83-2500 PHX WPC)

The parties stipulate pursuant to Rule 42(b), Rules of Civil Appellate Procedure, that this proceeding be dismissed without provision for costs.

Dated this _____ day of _____, 19__.

SHEA & WILKS

By: _____
Philip J. Shea
Arizona Bar #001183
Attorneys for the Appellant

JENNINGS, STROUSS & SALMON

By: _____
John B. Weldon, Jr.
Arizona Bar #003701
Attorneys for the Appellees

EXHIBIT "3.h.1."

River Water Exchange Contract
City of Chandler, Arizona

Exhibit "3.h.1"
RIVER WATER EXCHANGE CONTRACT
City of Chandler, Arizona

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Exhibit "3.h.1"
RIVER WATER EXCHANGE CONTRACT
City of Chandler, Arizona

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Exhibits

Exhibit "A" CAP Master Repayment Contract

Exhibit "B" Assignment among RWCD, CAWCD and the United States

Exhibit "C" SRPMIC Agreement Water Calculations (Tables 1 and 2)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE CITY OF CHANDLER, ARIZONA,
PROVIDING FOR WATER SERVICE

ARTICLE 1
Preamble

1. THIS CONTRACT, made as of the 12th day of February, 1988, in pursuance of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549, and 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), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, hereinafter referred to collectively as the "Federal Reclamation Laws," and the various authorities and responsibilities of the Secretary of the Interior in relation to Indians and Indian Tribes, as contained in Title 25 U.S.C. and 43 U.S.C. § 1457, among THE UNITED STATES OF AMERICA, acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as "CAWCD," a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the CITY OF CHANDLER, Arizona, hereinafter referred to as the "City," with its principal place of business at 200 East Commonwealth, Chandler, Arizona;

WITNESSETH, THAT:

ARTICLE 2
Explanatory Recitals

2. 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., CAWCD 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 CAWCD, shall be a party to contracts that are in conformity with and subsidiary to the master contract; and

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. . .

WHEREAS, the United States and CAWCD entered into Contract No. 14-06-W-245 dated December 15, 1972, which was amended on December 1, 1988, hereinafter referred to as the "Repayment Contract," a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, whereby CAWCD agrees to repay to the United States the reimbursable costs of the Central Arizona Project allocated to CAWCD; and

WHEREAS, the City has entered into a water service subcontract with the United States and CAWCD for municipal and industrial water service from water supplies available from the Central Arizona Project, Contract No. 5-07-30-W0070; and

WHEREAS, the United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert, Arizona, and CAWCD have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members, to finally resolve pending litigation on water rights and damage claims, and to seek funding for implementation of the settlement; and

WHEREAS, the United States, acting through the Secretary of the Interior, has both a trust and fiduciary responsibility to make the Salt River Pima-Maricopa Indian reservation a permanent

. . .

Tribal homeland for the Salt River Pima-Maricopa Indian Community; and

WHEREAS, as part of the water rights settlement with the Salt River Pima-Maricopa Indian Community, the United States is required to contract with the City for the delivery through Central Arizona Project facilities of not to exceed four thousand two hundred seventy-eight (4,278) acre-feet per year of Colorado River water which was not included in the determination of water supplies available to the Central Arizona Project, plus certain additional amounts of Central Arizona Project water to be made available each year by the Roosevelt Water Conservation District or the Secretary of the Interior from Central Arizona Project water supplies otherwise available for agricultural use;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 3
Definitions

3. For purposes of this Contract:

(a) "Agricultural water" shall mean water made available from the Central Arizona Project for the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than five acres.

(b) "CAWCD's service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such

other counties as may hereafter become part of the District, exclusive of any Indian reservation land lying wholly or partly within said Counties.

(c) "Central Arizona Project" or "CAP" or "project" shall mean the project and works authorized by Section 301(a) of the Colorado River Basin Project Act and constructed by the United States pursuant to the provisions of said Act.

(d) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix, and the Town of Gilbert.

(e) "Colorado River water" shall mean that Colorado River mainstream water to be delivered to the City under this Contract which has a Colorado River priority pre-dating September 30, 1968.

(f) "Contracting Officer" shall mean the Secretary or his authorized designee acting on his behalf.

(g) "Distribution works" shall mean those facilities constructed or used for the purpose of distributing water to or within the City's service area after said water has been transported through the water supply system to the City's project turnout(s).

(h) "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be amended or revised.

(i) "Miscellaneous water" shall mean water made available from the Central Arizona Project, or by exchange for such water, for recreational and fish and wildlife purposes at other than project facilities, and which has a lesser priority of use than agricultural water.

(j) "Municipal and industrial water," hereinafter sometimes referred to as "M&I water," shall mean water made available from the Central Arizona Project other than agricultural water and miscellaneous water.

(k) "Notice of completion" shall mean the notice which the Contracting Officer issues to CAWCD to announce the substantial completion of the water supply system, or of those features of the project which include or comprise the water supply system, or of the entire project if constructed concurrently, thereby initiating payments therefor allocated to CAWCD.

(l) "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

(m) "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

(n) "Assignment Water" shall mean that water to be delivered to the City under this Contract which is made available to the City by the Roosevelt Water Conservation District ("RWCD") or the Secretary of the Interior pursuant to the Assignment, dated as of February 12, 1988, among the United States, CAWCD, RWCD, and the Cities. A copy of the Assignment is attached hereto as Exhibit

Exhibit "B" and by this reference made a part hereof.

(o) "Project works" shall mean the principal works described in Section 301(a) of the Colorado River Basin Project Act, and appurtenances thereto, or as modified pursuant to the Repayment Contract, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

(p) "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from Colorado River water or Assignment Water as defined herein, but shall not include any water delivered through the project works for ground water recharge purposes.

(q) "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

(r) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988 among the United States of America, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, RWCD, the Roosevelt Irrigation District, the Cities, and CAWCD.

(s) "Subcontractor" shall mean any irrigation district, municipality, individual, or any other entity which enters into a water service subcontract with the United States and CAWCD in furtherance of the provisions of the Colorado River Basin Project Act.

. . .

(t) "Time of shortage" shall mean a calendar year for which the Secretary determines that a shortage exists pursuant to Section 301(b) of the Colorado River Basin Project Act, such that there is not sufficient water available for delivery from the Central Arizona Project in that year (after reduction in consideration of anticipated losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein) to meet fully the entitlements of Indian contractors and non-Indian municipal and industrial subcontractors of Central Arizona Project water supplies.

(u) "Transferred works" shall mean such features of the project or such facilities of the water supply system as to which OM&R responsibility is transferred from the United States to the Operating Agency.

(v) "Water supply system" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

(w) "Year" shall mean the period between January 1 through the next succeeding December 31.

ARTICLE 4
Term

4. This Contract shall become effective upon its execution by the parties hereto and its term shall be perpetual.

ARTICLE 5
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 4,278 acre-feet; and

(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 972 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 583 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery

point on the Colorado River, and shall be subject to reduction on account of losses by reason of evaporation and seepage occurring during the transportation of such water through the water supply system to the City's project delivery point. Said losses occurring on the City's Colorado River water supplies shall be determined by the Contracting Officer or the Operating Agency, but shall not exceed the City's pro rata share of losses as compared to losses due to evaporation and seepage occurring during transportation through the water supply system of all water supplies delivered during a year.

(d) The City's entitlement to Assignment Water under Subparagraphs 5(b)(ii) and 5(b)(iii) hereof, and its rights and obligations with respect to such Assignment Water, shall be subject to the terms and conditions of the Assignment attached hereto as Exhibit "B".

(e) The City's entitlement to Colorado River water and Assignment Water under this Contract shall be in addition to the City's entitlement to Central Arizona Project water for municipal and industrial use under the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0070).

(f) During such periods as it operates and maintains the Central Arizona Project, the United States shall deliver Colorado River water and Assignment Water to which the City is entitled under this Contract through the water supply system. Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the United States shall use all reasonable diligence to make available

to the City the quantity of Colorado River water and Assignment Water specified in the schedule submitted by the City in accordance with Article 6 hereof. After transfer of OM&R responsibility to the Operating Agency, the United States shall make deliveries of Colorado River water and Assignment Water to the Operating Agency which shall make subsequent delivery of such water to the City as provided herein.

(g) The obligation of the United States and the Operating Agency to deliver Colorado River water and Assignment Water to the City under this Contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, the contract between the United States and the State of Arizona dated February 9, 1944, the Opinion of the Supreme Court of the United States in the case of Arizona v. California et al., rendered June 3, 1963, 373 U.S. 546, and the Decree of that court in said case, entered March 9, 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as hereafter modified;

(ii) Executive A, Seventy-Eighth Congress, Second Session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and

Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty, all hereinafter referred to as the Mexican Water Treaty;

(iii) The express understanding and agreement by the City that this Contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this Contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and City shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam, Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to City hereunder; and

(iv) The right of the United States or the Operating Agency temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works what-

soever affecting, utilized or, in the opinion of the Secretary or the Operating Agency, necessary for delivery of water hereunder, it being understood that so far as feasible the United States or the Operating Agency will (i) do so during periods of low water demands and (ii) give reasonable notice in advance of such temporary discontinuance or reduction.

(h) Subject to the terms and conditions herein, the United States and the Operating Agency shall be obligated to deliver Colorado River water and Assignment Water to the City without regard as to whether or not the Salt River Pima-Maricopa Indian Community exercises its right to use any or all of the exchange water referred to in Paragraph 12 of the Settlement Agreement.

(i) Delivery and use of Colorado River water and Assignment Water under this Contract is further conditioned on the following, and the City hereby agrees that:

(i) All uses of Colorado River water, Assignment Water and return flow shall be consistent with Arizona water law unless such law is inconsistent with the Congressional directives applicable to the Central Arizona Project.

(ii) The system or systems through which Colorado River water and Assignment Water for municipal and industrial (including ground water recharge) purposes is conveyed after delivery to the City shall consist of pipelines, canals, distribution systems, or other conduits provided and maintained with linings adequate in the Contracting Officer's judgment to prevent excessive conveyance losses.

(iii) The City shall not pump, or within its legal authority, permit others to pump ground water from within the exterior boundaries of the City's service area, which has been delineated on a map filed with the Contractor and approved by the Contractor and the Contracting Officer, for use outside of said service area unless such pumping is permitted under Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time, and the Contracting Officer, CAWCD, and the City shall agree, or shall have previously agreed, that a surplus of ground water exists and drainage is or was required; Provided, however, That such pumping may be approved by the Contracting Officer and CAWCD, and approval shall not be unreasonably withheld, if such pumping is in accord with the Colorado River Basin Project Act and upon submittal by the City of a written certification from the Arizona Department of Water Resources or its successor agency that the pumping and transportation of ground water is in accord with Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time.

(iv) The City shall not sell or otherwise dispose of or permit the sale or other disposition of Colorado River water and Assignment Water for use outside of Maricopa, Pinal, and Pima Counties; Provided, however, That this does not prohibit exchanges of Colorado River water and Assignment Water covered by separate agreements; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to . . .

Article 6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0070).

(j) (i) Colorado River water and Assignment Water scheduled for delivery in any year under this contract may be used by the City or resold or exchanged by the City pursuant to appropriate agreements approved by the Contracting Officer and CAWCD. If said water is resold or exchanged by the Contractor for an amount in excess of that which the City is obligated to pay under this Contract, the excess amount shall be paid forthwith by the City to CAWCD for application against the CAWCD's repayment obligation to the United States; Provided, however, That the Contractor shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to OM&R costs.

(ii) Colorado River water and Assignment Water scheduled for delivery in any year under this Contract that cannot be used, resold, or exchanged by the City may be made available by the Contracting Officer or the Operating Agency to other users. If such water is sold to or exchanged with other users, the City shall be relieved of its payments hereunder only to the extent of the amount paid to the Contracting Officer and the Operating Agency by such other users, but not to exceed the amount the City is obligated to pay under this Contract for said water.

(iii) In the event the City, the Contracting Officer, or the Operating Agency is unable to sell any portion of the Colorado River water or Assignment Water scheduled for delivery by the City but not required by the City in any year, the City

shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water as determined by the Contracting Officer or the Operating Agency.

(k) The City shall have the right to use Colorado River water and Assignment Water received under this Contract for any purpose consistent with Arizona law, including ground water recharge.

ARTICLE 6
Procedure for Ordering Water

6. At least six months prior to the delivery of Colorado River water and Assignment Water to the City under this Contract, the Contracting Officer or the Operating Agency shall issue a written notice of availability of such water to the City. The City will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer and the Operating Agency showing the quantities of (i) Colorado River water and (ii) Assignment Water requested for delivery. The City shall submit a schedule which requests the delivery of all Assignment Water available to it. If the first notice of availability of water is issued to the City by the Contracting Officer or the Operating Agency prior to June 1 of any year, the first schedule for the balance of said year shall be submitted to the Contracting Officer and the Operating Agency within 30 days after the City's receipt of such notice. If such notice is issued after June 1 of any year, the first schedule shall be submitted to the Contracting Officer and the Operating Agency within 30 days after the City's

receipt of such notice and shall cover the balance of such year and the next succeeding year. Thereafter, the amounts, times, and rates of delivery of water to the City during any year shall be in accordance with a water delivery schedule for that year, such schedule to be determined in the following manner:

(a) On or before June 1 of each year, the Contracting Officer shall announce (i) the amount of Colorado River water and (ii) the amount of Assignment Water available for delivery during the following year in a written notice to the Operating Agency and the City.

(b) On or before October 1 of each year, the City shall submit in writing to the Operating Agency and the Contracting Officer a water delivery schedule indicating the amounts of (i) Colorado River water and (ii) Assignment Water desired by the City during each month of the following year along with a preliminary schedule of water desired for the succeeding 2 years. The City shall schedule for delivery each year all Assignment Water available to it for delivery during that year.

(c) Upon receipt of such schedule, the Contracting Officer and the Operating Agency shall review it and, after consultation with the City, shall make only such modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to the City are consistent with the delivery capability of the project, considering, among other things, the availability of water and the delivery schedules of all subcontractors of Central Arizona Project water service; Provided, That

this provision shall not be construed to reduce annual deliveries to the City.

(d) On or before November 15 of each year, the Contracting Officer or the Operating Agency shall determine and furnish to the City the water delivery schedule for the next succeeding year which shall show the amounts of (i) Colorado River water and (ii) Assignment Water to be delivered to the City during each month of that year.

(e) The monthly water delivery schedules may be amended by the Contracting Officer or the Operating Agency upon the City's written request. Proposed amendments shall be submitted by the City within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer or the Operating Agency in like manner as the schedule itself.

(f) In no event shall the Contracting Officer or the Operating Agency be required to deliver in any one month (i) an amount of Colorado River water greater than eleven percent (11%) of the City's maximum annual entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment Water greater than eleven percent (11%) of the City's maximum annual entitlement to Assignment Water under Subarticle 5(b)(ii) or 5(b)(iii) of this Contract; Provided, however, That the Contracting Officer or the Operating Agency may deliver a greater percentage of such water in any month if such increased delivery is compatible with the overall delivery of Central Arizona Project water to CAP

subcontractors as determined by the Contracting Officer and the Operating Agency, and if the City agrees to accept such increased deliveries.

ARTICLE 7
Points of Delivery--Measurement and Responsibility for Distribution of Water

7. (a) All water to be furnished to the City pursuant to this Contract shall be delivered at turnouts to be constructed by the United States at such point(s) on the water supply system as may be agreed upon in writing by the Contracting Officer and CAWCD, after consultation with the City.

(b) Unless the United States and the City agree by contract to the contrary, the City shall construct and install, at its sole cost and expense, connection facilities required to take and convey such water from the turnouts to the City's service area. The City shall furnish, for approval of the Contracting Officer, drawings showing the construction to be performed by the Contractor within the water supply system right-of-way six months before starting said construction. The facilities may be installed, operated, and maintained on the water supply system right-of-way subject to such reasonable restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by the Contracting Officer.

(c) All water delivered to the City pursuant to this Contract shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or by the Operating Agency. Upon the request of the

City or the Operating Agency, the accuracy of such measurements shall be investigated by the Contracting Officer or by the Operating Agency and the City, and any errors which may be mutually determined to have occurred therein shall be adjusted; Provided, That in the event the parties cannot agree on the required adjustment, the Contracting Officer's determination shall be conclusive.

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

(e) In addition to the right of the United States under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce the amount of water to be delivered through the Central Arizona Project, the United States or the Operating Agency may, after consultation with the City, temporarily discontinue or reduce the quantity of water to be furnished to the City as herein provided for the purpose of investigation, inspection, maintenance, repair, or replacement of any CAP facilities or any part thereof necessary for the furnishing of water to the City under this Contract, but so far as feasible the United States or

the Operating Agency shall coordinate any such discontinuance or reduction with the City and shall give the City due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Neither the United States, its officers agents, and employees, nor the Operating Agency, its officers, agents, and employees, shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to the City of less water than what has been paid for in advance, the City shall be entitled to be reimbursed for the appropriate proportion of advance payments of OM&R charges prior to the date of the City's next payment of OM&R charges or the City may be given credit toward the next payment of OM&R charges if the City should so desire.

ARTICLE 8
Priority in Case of Shortage

8. (a) Subject to the provisions of Section 304(e) of the Colorado River Basin Project Act, in the event of a shortage of the water supplies available to the Central Arizona Project, as determined by the Contracting Officer after consultation with CAWCD, Assignment Water furnished to the City under this Contract shall be subject to reduction in the same manner and to the same extent as agricultural water under Central Arizona Project agricultural water service subcontracts.

. . .

. . .

(b) In a time of shortage, the City's entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract shall be determined by the following formula:

City's entitlement to Colorado River water in a time of shortage = $[(X+Y) \cdot (A+B)/(C+D)] - [(X/D) \cdot A]$*

Where:

X = the City's entitlement to Central Arizona Project water for M&I water use under Article 4.12 of Contract No. 5-07-30-W0070, as the same may be amended or supplemented from time to time;

Y = 5,056 acre-feet;

A = the total amount of water available from the Central Arizona Project for non-Indian M&I water use (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein), as determined by the Contracting Officer in accordance with the method outlined in the Record of Decision of the Secretary published in the Federal Register on March 24, 1983;

B = the total amount of Colorado River water available to the Cities pursuant to this Contract with the City of Chandler and like contracts with the other Cities (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system);

C = 26,000 acre-feet.

D = the sum of all non-Indian municipal and industrial subcontractors' entitlements to Central Arizona Project water for M&I water use under Article 4.12 of all non-Indian CAP municipal and industrial subcontracts, as the same may be amended or supplemented from time to time;

* It is the intent of the parties that this calculation be performed in a manner which is consistent with the method of calculation exemplified in Tables 1 and 2 attached hereto as Exhibit "C".

. . .

. . .

(c) Notwithstanding the provisions of Subarticle 5(c) of this Contract, the City's entitlement to Colorado River water, as determined in accordance with the formula set forth in Subarticle 8(b) hereof, shall be made available to the City at the City's project turnout(s).

(d) In a time of shortage, any Colorado River water available from the 22,000 acre-feet to be obtained by the United States pursuant to Subarticle 5(a) hereof in excess of that necessary to satisfy the entitlement of the City under Subarticle 8(b) of this Contract and the entitlements of the other Cities under Subarticle 8(b) of like contracts with such Cities shall be made available by the Secretary for delivery to non-Indian CAP municipal and industrial subcontractors other than the Cities pursuant to the Central Arizona Project M&I water service subcontracts with such subcontractors, pro rata in proportion to each such subcontractor's entitlement to Central Arizona Project water for M&I use under such subcontractor's Central Arizona Project M&I water service subcontract. The manner in which this Subarticle 8(d) is intended to operate is illustrated by Tables 1 and 2 attached hereto as Exhibit "C".

ARTICLE 9
Payments

9. (a) Subject to the provisions of Article 11 hereof, the City shall pay in advance for CAP OM&R costs estimated to be incurred by the United States or the Operating Agency in delivering Colorado River water and Assignment Water to the City pursuant to

this Contract. At least 6 months prior to the first delivery of such water, or as soon thereafter as is practicable, the Contracting Officer or the Operating Agency shall furnish the City with an estimate of the City's share of OM&R costs to the end of the initial year of water delivery and an estimate of such costs for the following year. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer or the Operating Agency, but prior to the delivery of water, the City shall advance to the Contracting Officer or the Operating Agency its share of such estimated costs to the end of the initial month of water delivery and without further notice or demand shall on or before the first day of each succeeding month of the initial year of water delivery and the following year advance to the Contracting Officer or the Operating Agency in equal monthly installments the City's share of such estimated costs. Advances of monthly payments for each subsequent year shall be made by the City to the Contracting Officer or the Operating Agency on the basis of annual estimates to be furnished by the Contracting Officer or the Operating Agency on or before June 1 preceding each said subsequent year, and the advances of payments for said estimated costs shall be due and payable in equal monthly payments on or before the first day of each month of the subsequent year. Differences between actual OM&R costs and estimated OM&R costs shall be adjusted in the next succeeding annual estimates; Provided, however, That if in the opinion of the Contracting Officer or the Operating Agency the amount of any annual OM&R estimate is likely to be insufficient to

cover the above-mentioned costs during such period, the Contracting Officer or the Operating Agency may increase the annual estimate of the City's OM&R costs by written notice thereof to the City, and the City shall forthwith increase its remaining monthly payments in such year to the Contracting Officer or the Operating Agency by the amount necessary to cover the estimated insufficiency. All estimates of OM&R costs shall be accompanied by data and computations relied on by the Contracting Officer or the Operating Agency in determining the amounts of the estimated OM&R costs and shall be subject to joint review by the City and the Contracting Officer or the Operating Agency.

(b) Other than as provided for in Exhibit "B" hereto with respect to Assignment Water the City shall not be required to pay any water service capital charge(s) with respect to Colorado River water or Assignment Water to which the City is entitled under this Contract.

(c) Payment of all OM&R charges becoming due hereunder prior to or on the dates stipulated in Subarticle 9(a) hereof is a condition precedent to receiving water under this Contract.

(d) All payments to be made to the Operating Agency or the United States under Subarticle 9(a) hereof shall be made by the City as such payments fall due from revenues legally available to the City for such payment from the sale of water to its water users and from any and all other sources which might be legally available; Provided, That no portion of the general taxing authority of the City, nor its general funds, nor funds from ad valorem

taxes are obligated by the provisions of this Contract, nor shall such sources be liable for any payments, contributions, or other costs pursuant to this Contract, or to satisfy any obligation hereunder unless duly and lawfully allocated and budgeted for such purpose by the City for the applicable budget year; and Provided, further, That no portion of this Contract shall ever be construed to create an obligation superior in lien to or on a parity with the Cities' revenue bonds now or hereafter issued. The City shall levy and impose such necessary water service charges and rates and use all the authority and resources available to it to collect all such necessary water service charges and rates in order that the City may meet its obligations hereunder and make in full all payments required under this Contract on or before the date such payments become due.

ARTICLE 10
Loss of Entitlement

10. The City shall have no right to delivery of Colorado River water or Assignment Water under this Contract during any period in which the City may be in arrears in the payment of any charges due the United States or the Operating Agency. The Contracting Officer or the Operating Agency may sell to another entity any water determined to be available under the City's entitlement for which payment is in arrears; Provided, however, That, except as provided to the contrary in Exhibit "B" hereto, the City may regain the right to use any unsold portion of the water determined to be available under the City's original entitlement upon (i) payment of

all delinquent charges plus any difference between the contractual obligation and the price received in the sale of the water by the Contracting Officer or Operating Agency and (ii) payment of charges for the current period.

ARTICLE 11
Refusal to Accept Delivery

11. In the event the City fails or refuses in any year to accept delivery of the quantity of water available for delivery to and required to be scheduled by it pursuant to this Contract, or in the event the City in any year fails to submit a schedule for delivery as provided in Article 6 hereof, said failure or refusal shall not relieve the City of its obligation to make the payments required in this Contract.

ARTICLE 12
Charges for Delinquent Payments

12. (a) The City shall be subject to interest, administrative, and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the City shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the City shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the City shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the City shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

ARTICLE 13
Secretarial Control of Return Flow

13. (a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of CAWCD's service area as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for CAP use return flow which originates or results from water contracted for from the Central Arizona Project within the boundaries of CAWCD's service area if, in his judgment, such return flow is not being put to a beneficial use. The City may recapture and reuse or sell its return flow; Provided, however, That such return flow may not be sold for use outside Maricopa, Pinal, and Pima Counties; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2 of the City's Central Arizona

Project M&I water service subcontract (Contract No. 5-07-30-W0070). The City shall, at least 60 days in advance of any proposed sale of such water, furnish the following information in writing to the Contracting Officer and CAWCD:

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

(ii) The location and proposed use of the return flow.

(iii) The price to be charged for the return flow.

(b) The price charged for the return flow may cover the cost incurred by the City for Colorado River water and Assignment Water plus the cost required to make the return flow usable. If the price received for the return flow is greater than the costs incurred by the City, as described above, the excess amount shall be forthwith paid by the City to the CAWCD for application against CAWCD's repayment obligation to the United States. Costs required to make return flow usable shall include but not be limited to capital costs and OM&R costs including transportation, treatment, and distribution, and the portion thereof which may be retained by the City shall be subject to the advance approval of CAWCD and the Contracting Officer.

(c) Any return flow captured by the United States and determined by the Contracting Officer and CAWCD to be suitable and available for use by the City may be delivered by the United States or Operating Agency to the City as a part of the water

supply for which the City has subcontracted pursuant to Contract No. 5-07-30-W0070, and such water shall be accounted and paid for pursuant to the provisions thereof.

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

ARTICLE 14
Water and Air Pollution Control

14. The City, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

ARTICLE 15
Quality of Water

15. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. Neither the United States nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. The City waives its right to make a claim against the United States, the Operating Agency, or any subcontractor because of changes in water quality caused by the

. . .

commingling of water to be delivered under this Contract with other water.

ARTICLE 16
Equal Opportunity

16. During the performance of this Contract, the City agrees as follows:

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

(b) The City will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

. . .

(c) The City will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising said labor union or workers' representative of the City's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The City will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The City will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the City's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the City may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as pro-

vided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The City will include the provisions of Subarticles 16(a) through 16(g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The City will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the City becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 17
Compliance with Civil Rights Laws and Regulations

17. (a) The City shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national

origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the City agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

ARTICLE 18
Notices

18. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the City and CAWCD, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States and CAWCD, when mailed, postage prepaid, or delivered to the Manager of the City, 200 East Common-

wealth, Chandler, Arizona 85225, on behalf of the City and the United States, when mailed, postage prepaid, or delivered to the General Manager, Central Arizona Water Conservation District, 23636 North Seventh Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

ARTICLE 19
Assignment Limited--Successors and Assigns Obligated

19. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid unless and until approved in writing by the Contracting Officer and CAWCD.

ARTICLE 20
Officials Not to Benefit

20. No Member of or Delegate to Congress, Resident Commissioner, or official of the City shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

ARTICLE 21
Transfer of OM&R Responsibility to CAWCD; Project Repayment

21. (a) At or prior to the date that the United States transfers OM&R responsibility for project works associated with delivery of water to the Cities to CAWCD as the Operating Agency, the United States shall secure the agreement of CAWCD to perform the United States' obligations under this Contract to deliver water

under this Contract through the transferred works.

(b) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract and any amendment or revision thereof, the costs associated with the delivery of water to the City under this Contract shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

ARTICLE 22
Repayment Contract Controlling

22. Pursuant to the Repayment Contract, the United States has agreed to construct and, in the absence of an approved Operating Agency, to operate and maintain the works of the Central Arizona Project and to deliver Central Arizona Project water to the various subcontractors within CAWCD's service area; and CAWCD has obligated itself for the payment of various costs, expenses, and other amounts allocated to CAWCD pursuant to Article 9 of the Repayment Contract. The City expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

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IN WITNESS WHEREOF, the parties hereto have executed this Contract No. 9-07-30-W0235 the day and year first above-written.

THE UNITED STATES OF AMERICA

By _____

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Attest: _____
Secretary

By _____
President

CITY OF CHANDLER, ARIZONA

Attest: _____
City Clerk

By _____
Mayor

Approved as to Form: _____
City Attorney

Exhibit "A"

CAP Master Repayment Contract

DUPLICATE-ORIGINAL

Contract No. 14-06-W-245
Amendment No. 1
B.C. Draft 11/28/88

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

1. PARTIES

The parties to this contract, executed as of this first day of December, 1988, are the United States of America, acting through the Department of the Interior, and the Central Arizona Water Conservation District, a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona.

2. AUTHORITIES

This contract is made pursuant to the:

2.1 Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto.

2.2 Boulder Canyon Project Act, approved December 21, 1928, 45 Stat. 1057, a supplement to the Federal Reclamation Laws.

2.3 Reclamation Project Act of 1939, approved August 4, 1939, 53 Stat. 1187, as amended.

2.4 Colorado River Basin Project Act, approved September 30, 1968, 82 Stat. 885, as amended, a supplement to the Federal Reclamation Laws.

2.5 Arizona Revised Statutes, Section 48-3701 et seq.

3. RECITALS

3.1 The Colorado River Basin Project Act provides, among other things, that for the purposes of furnishing irrigation water and municipal and industrial water supplies to water-deficient areas in 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, consisting of the principal works hereinafter described in Article 6.3.

3.2 Pursuant to the provisions of Arizona Revised Statutes, Section 48-3701 et seq., the Central Arizona Water Conservation District 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, Section 48-3701 et seq.

3.3 On December 15, 1972, the United States and the Contractor entered into a contract entitled "Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), whereby, among other things, the United States agreed to construct the Central Arizona Project and the Contractor agreed to repay the costs of the project properly allocable to the Contractor.

3.4 Subarticle 9.3(b) of said contract provides that the Contractor's repayment obligation shall not exceed $1.2 billion.

3.5 Subarticle 9.3(b) of said contract also provides that if the

Contractor's repayment obligation will exceed $1.2 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation.

3.6 Both parties acknowledge that the Contractor's repayment obligation will exceed $1.2 billion, and have agreed to increase the Contractor's repayment ceiling to a level sufficient to facilitate completion of the project.

4. ARTICLES OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is agreed by and between the parties hereto as follows:

5. DEFINITIONS

When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the terms:

5.1 "Federal Reclamation Laws" or "Reclamation Laws" shall mean the Act of June 17, 1902, 32 Stat. 388, and all acts amendatory thereof or supplementary thereto.

5.2 "Basin Project Act" shall mean the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, as amended, which is a supplement to the Federal Reclamation Laws.

5.3 "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

5.4 "Contracting Officer" shall mean the Secretary or his authorized designee acting in his behalf.

5.5 "Contractor" shall mean the Central Arizona Water

Conservation District, organized pursuant to Arizona Revised Statutes, Section 48-3701 et seq.

5.6 "Service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties of Arizona and such other counties as may hereafter become part of the District, exclusive of any Indian reservation land lying wholly or partly within said Counties.

5.7 "Subcontractor" shall mean any irrigation district, municipality, individual, or any entity which enters into a water service subcontract with the United States and the Contractor in furtherance of the provisions of the Basin Project Act.

5.8 "Central Arizona Project" or "project" shall mean the project and works authorized by Section 301(a) of the Basin Project Act and constructed by the United States pursuant to the provisions of said Act and this contract.

5.9 "Project works" shall mean the principal works described in Section 301(a) of the Basin Project Act, and appurtenances thereto, or as modified pursuant to Article 6.4 hereof, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

5.10 "Water supply system" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt Gila and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

5.11 "Distribution works" shall mean those facilities constructed or financed by the United States under the authorization in Section 309(b) of the Basin Project Act for the primary purpose of

distributing the project water supply within the service area after said project water supply has been transported or delivered through the water supply system.

5.12 "Agricultural water" or "irrigation water" shall mean project water used primarily in the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than 5 acres.

5.13 "Miscellaneous water" shall mean water delivered from the project, or by exchange for project water, for recreational and fish and wildlife purposes at other than project facilities and shall have a lesser priority of use than agricultural water.

5.14 "Municipal and industrial water," herein referred to as "M&I water," shall mean project water other than agricultural or miscellaneous water delivered by means of the project works.

5.15 "Lands not having a recent irrigation history" shall mean, except where otherwise determined by the Secretary for efficiency of subcontractor's operation, lands which the Secretary determines were not irrigated during the period September 30, 1958, to September 30, 1968.

5.16 "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

5.17 "Exchange water" shall mean Colorado River water made available in exchange for or in replacement of existing supplies from surface sources other than the mainstream of the Colorado River.

5.18 "Transferred works" shall mean such facilities of the water supply system or of other construction stages as to which OM&R

responsibility is transferred from the United States to the Operating Agency.

5.19 "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

5.20 "Transfer notice" shall mean a written notice or notices, numbered consecutively, which the Contracting Officer transmits to the Operating Agency and which shall designate:

(a) the transferred works;

(b) items of equipment and supplies transferred to the Operating Agency; and

(c) the date upon which such transfer will be effected.

5.21 "Gila River system waters" shall mean waters of the Gila River and tributaries thereof east of the Yuma-Maricopa County line.

5.22 "Notice of completion" shall mean the notice which the Contracting Officer issues to Contractor to announce the substantial completion of a construction stage. Each such notice of completion shall include the estimated amount of the repayment obligation for the construction stage to which the notice pertains, the date of initiation of repayment for the construction stage and indicate the amount and due date for the first payment for the construction stage.

5.23 "Development Fund" shall mean the separate fund, known as the Lower Colorado River Basin Development Fund, established in the Treasury of the United States pursuant to Section 403(a) of the Basin Project Act.

5.24 "Year" shall mean the period January 1 through the next

succeeding December 31.

5.25 "Contractor's Construction Cost Repayment Obligation," hereinafter referred to as "repayment obligation," shall mean the total amount of all construction costs including related construction claims and interest thereon, OM&R costs during construction, and interest on costs allocated to the M&I water and power functions during construction, of the Central Arizona Project, incurred therefor and as determined by the United States and further described in Article 6.2 hereof, excluding reimbursable costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors, and which is determined by the Secretary, after consultation with the Contractor, to be allocable to and repayable by the Contractor in accordance with the provisions of the Basin Project Act and this contract.

5.26 "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from water contracted for from the Central Arizona Project, but shall not include any water delivered through the project works for ground water recharge purposes.

5.27 "Project water" shall mean (a) all water allocated by the Secretary for project purposes by Federal Register notice dated March 24, 1983, and any subsequent reallocation by the Secretary as contemplated in paragraph 6 of said Federal Register notice, which water is available pursuant to contracts with the Secretary from: (1) the Colorado River; (2) Central Arizona Project dams and reservoirs; and (3) return flows captured by the Secretary for project use; (b) any water

delivered to entities in Arizona, through the project works, as a replacement supply for Cliff Dam; (c) water delivered to water users in Arizona, through the project works, in exchange for water delivered to users in New Mexico from or by means of the project works; and (d) any additional water not included in (a) above, that is required to be delivered by the Secretary through the project, pursuant to the Ak-Chin Water Rights Settlement Act of 1978 (Public Law 95-328), as amended on October 19, 1984 (Public Law 98-530); the Southern Arizona Water Rights Settlement Act of October 12, 1982 (Title III of Public Law 97-293); and, subject to the execution of a settlement agreement by the Contractor providing for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community and to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (Public Law 100-512), up to 22,000 acre-feet annually of Colorado River water to be delivered through the project works in accordance with said settlement agreement and legislation.

5.28 "Indian lands" shall mean the lands within any Indian reservation for which an allocation of project water has or will be made by the Secretary for delivery through project works.

5.29 "Navajo Project" shall mean the interests of the United States in the Navajo Generating Station and the Transmission System, or any replacement thereof, as authorized by Section 303 of the Basin Project Act and as described in contracts entered into pursuant to that Act.

5.30 "Construction stage" shall mean any one of the following: (1) the water supply system; (2) New Waddell and Modified Roosevelt Dams; (3) replacement features or programs for Cliff Dam; (4) Tucson terminal storage; (5) Hooker Dam or suitable alternative; and (6) Buttes Dam.

5.31 "Plan 6" shall mean Plan 6 for the Regulatory Storage Division of the Central Arizona Project as approved by Record of Decision of the Secretary dated April 3, 1984 as amended and supplemented by Records of Decision of the Secretary dated May 20, 1986 (Supplement One) and June 17, 1988 (Supplement Two).

5.32 "Allocable cost" shall mean (a) with respect to the project, the total project cost less (1) the cost of non-Indian distribution works, (2) the cost of the safety of dams component of Plan 6, (3) the cost of Indian distribution systems, (4) the cost of the Colorado River Division and the New Mexico fish hatchery, (5) the cost of cultural resources studies, (6) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (7) the costs of Charleston Dam and San Pedro Aqueduct, (8) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (9) such other costs as determined appropriate by the Contracting Officer; and (b) with respect to each construction stage, the total cost of such stage less that portion of the following costs associated with such stage: (1) the cost of the safety of dams component of Plan 6, (2) the cost of cultural resources studies, (3) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (4) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (5) such other costs as determined appropriate by the Contracting Officer.

5.33 "OM&R Transfer Contract" shall mean the August 5, 1987, contract entitled "Contract Between the United States of America and the

Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities" (Contract No. 7-07-30-W0167), and any amendment or revision thereof.

5.34 "Overall repayment period" shall mean the period of time beginning with initiation of repayment of the first construction stage and ending with final payment of the last construction stage.

5.35 "Plan 6 Funding Agreement" shall mean the April 15, 1986, agreement entitled "Agreement Among the United States, the Central Arizona Water Conservation District, the Flood Control District of Maricopa County, the Salt River Agricultural Improvement and Power District and Salt River Valley Water Users' Association, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, the State of Arizona, and the City of Tucson for Funding of Plan Six Facilities of the Central Arizona Project, Arizona, and for other Purposes," as it may be supplemented or amended.

5.36 "Permanent service" shall mean that water supply service commencing in the year following substantial completion of the water supply system and continuing in perpetuity.

5.37 "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be amended or revised.

5.38 "Project power" shall mean the United States' entitlement to capacity and energy from the Navajo Project.

6. PROJECT CONSTRUCTION

6.1 Agreement of the United States. Subject to the terms and

conditions of this contract and within the limits of the funds made available therefor by Congress, the United States will expend toward the construction of the project, exclusive of interest costs during construction, $832,180,000 based on 1967 cost estimates, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein, or so much of such amount, as in the opinion of the Secretary, is necessary to construct said project, whichever amount is the lesser. The aforementioned amount includes the United States' costs of participation in the Navajo Project.

6.2 Costs of Project.

(a) The estimated construction cost of $832,180,000 for the project, based upon 1967 prices, has been determined as follows:

	$ 1,000's
Main System	
Granite Reef Division	407,740
Orme Division	42,340
Salt-Gila Division	47,170
Tucson Aqueduct (Colorado River source)	46,300
Buttes Dam	35,240
Navajo Project	106,000
Subtotal	684,790
Other Separate Features	
Hooker Dam or suitable alternative	31,730
Charleston Dam and San Pedro Aqueduct (San Pedro River source)	36,420
Subtotal	68,150
Miscellaneous Features	
*Gila River Division	5,250
Indian Distribution System	19,970
Colorado River Division	42,450
Drainage System	11,570
Subtotal	79,240
Total Project	$832,180

*Note: Fish hatchery costs, some of which may be located on the Colorado River.

Provided, however, That (i) the adjustment provisions of Article 6.1 apply

to the total construction costs of the project and not to the costs of the individual line items set out in this Subarticle 6.2(a), and (ii) in accordance with provisions of Article 6.4 herein, the references to the individual line items set out in this Subarticle 6.2(a) are not to be deemed a determination that each of the features referred to in the individual line items will be constructed or that costs will be incurred for each of said individual line items based upon a percentage which the estimated costs for each individual line item bears to the project's total estimated construction costs.

(b) The Central Arizona Project costs incurred by the United States which are to be repaid by Contractor shall include the share allocated to the Contractor of (i) construction costs of the project, (ii) all expenses of whatsoever kind or nature heretofore or hereafter incurred by the United States in connection with, growing out of, or resulting from the construction, and (iii) the OM&R during construction of project works. The aforementioned share of allocated costs shall also include, but shall not be limited to, interest during construction on costs allocated to the M&I water and power functions, the cost of labor, materials, equipment, engineering, legal services, surveys, investigations, property, superintendence, administration, overhead, general expenses, special services, damages of all kinds and character, inspection, repair, and protection of project works and water supply, and the costs of all lands, interests in lands, and rights-of-way acquired by the United States for the project, all as determined by the Secretary.

6.3 Principal Works of the Project. The works and facilities to be constructed under this contract shall consist of the following principal

works:

(a) A system of main conduits and canals, including the Havasu Pumping Plant and a main canal and pumping plants (Granite Reef Aqueduct and pumping plants), for diverting and carrying water from Lake Havasu to the confluence of the Salt and Verde Rivers, which system will have a capacity of 3,000 cubic feet per second;

(b) Salt-Gila Aqueduct and pumping plant;

(c) Tucson Aqueduct and pumping plants;

(d) New Waddell and Modified Roosevelt Dams;

(e) replacement features or programs for Cliff Dam;

(f) Tucson Terminal Storage (if approved by the Secretary);

(g) Buttes Dam and Reservoir;

(h) Hooker Dam and Reservoir or suitable alternative which shall be constructed in such manner as to give effect to the provisions of Section 304(f) of the Basin Project Act;

(i) Charleston Dam and Reservoir and the San Pedro Aqueduct;

(j) related canals, regulating facilities, and electric transmission facilities required for the operation of said principal works;

(k) related water distribution and drainage works; and

(l) appurtenant works.

No works or facilities for the treatment of water are included in the project works to be constructed by the United States. Nothing contained herein shall be construed to indicate the order in which the aforedescribed works will be constructed.

6.4 Changes in Project Works. Should the Secretary, either before or during construction, determine it to be in the best interests of

the project, he may, upon the completion of the studies currently being made or to be made, including land classifications, hydrological, engineering, geological, sedimentation, water supply, and repayment ability, and after consultation with the Contractor, change the location, size, or capacity of any of the project works, or may eliminate works, or add works to those described above, and the Secretary's decision on such changes, eliminations, and additions shall be conclusive.

6.5 Construction Conditions. The United States shall be under no obligation to commence or, having commenced, to continue construction of project works until transfer from the State of Arizona of such State-owned lands or interests therein, in a form acceptable to the Attorney General of the United States, as the Secretary determines is necessary in the construction, operation, or maintenance of the project.

6.6 Annual Work Program. During construction of the project works the Contracting Officer will consult with the Contractor and/or with any subcontractor through or within whose service area project works are to be constructed to achieve maximum coordination between such construction program and the annual programs of any affected subcontractor. Within 30 days following the enactment by Congress and Presidential approval of annual or supplementary appropriation acts and the allotment of funds thereunder for continued construction of the project, the United States will furnish the Contractor with a notice and statement showing the proposed construction program for the balance of the current fiscal year and for the following fiscal year or years. If so requested in writing by the Contractor within 30 days of its receipt of such notice, the Secretary will consult with the Contractor and/or the affected subcontractor with respect

to the proposed program. The action of the Contracting Officer concerning the program after such consultation shall be final.

6.7 Inability of the United States to Complete Project on Basis of Cost Estimates. If construction of the project works shall have been commenced but, prior to completion, the Secretary determines that the cost of constructing the project will exceed the maximum amount to be expended therefor by the United States as provided for in Article 6.1 hereof, the Secretary may after consultation with the Contractor terminate construction and declare the obligations of the United States hereunder with regard to completion of construction of the project to have been fulfilled. If appropriations for the continuance and/or completion of construction in amounts sufficient in the opinion of the Secretary to complete said construction are authorized by Congress and are available, the Secretary shall consult with the Contractor and shall make continuation of construction contingent upon the execution of an amendatory contract with the Contractor wherein the Contractor's maximum repayment obligation is increased so as to cover the increased reimbursable costs as determined by the Secretary; Provided, however, That the Contractor shall not utilize any part of the completed or unfinished project facilities in the absence of written agreement with the Secretary for reimbursement therefor.

7. PROJECT OPERATION, MAINTENANCE, AND REPLACEMENT

7.1 Operation and Maintenance and Water Deliveries by the United States Prior to Completion of Construction. Except as provided in the OM&R Transfer Contract, prior to completion of project works by the United States, as determined and announced to the Contractor in writing by the Secretary, the United States will operate and maintain said project

facilities. The cost of said OM&R allocated to the Contractor shall be included in the Contractor's repayment obligation; Provided, however, That said OM&R cost shall not be included with the project cost ceiling set out in Article 6.1 hereof. During the aforesaid period, project water, if available, may be disposed of by the Secretary at charges which the Secretary determines to be appropriate; Provided, however, That to the extent deemed feasible by the Secretary, preference will be given to subcontractors and Indian lands. Payment for water shall be made in advance by the water user. The places of measurement and delivery of said water shall be established by the Secretary after consultation with the Contractor. Except as provided in the OM&R Transfer Contract, the proceeds accruing from the disposal of such water shall be credited to the Development Fund and applied toward the costs of the project as determined by the Secretary.

7.2 Operation and Maintenance and Water Deliveries after Completion of Construction. Except as provided in the OM&R Transfer Contract and any future agreements for the transfer of OM&R of the project works or portions thereof, upon completion of construction of a construction stage or upon completion of construction of the project, the United States shall operate and maintain such construction stage or the project and shall make project water available to project water users.

8. DELIVERY OF WATER

8.1 Obligation of United States. Subject to the terms, conditions, and provisions set forth herein, the United States will deliver project water to Contractor and, during such periods as it operates and maintains the water supply system, the United States will also transport and

deliver said water to the subcontractors. After transfer of OM&R the United States will make deliveries of Colorado River water to the Operating Agency; deliveries of other project waters will be made pursuant to determinations made by the Secretary.

8.2 Term of Contract. Subject to the terms, conditions, and provisions set forth herein, this contract is for permanent service.

8.3 Conditions Relating to Delivery.

(a) The obligation of the United States to deliver water under this contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, dated September 30, 1968, 82 Stat. 885; the contract between the United States and the State of Arizona, dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of Arizona v. California et al., 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, as now issued or hereafter modified.

(ii) Executive A, Seventy-eighth Congress, Second Session, a treaty between the United States of

America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the water of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty.

(iii) The express understanding and agreement by the Contractor that this contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and the Contractor shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam,

Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to Contractor hereunder.

(iv) The right of the United States temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works whatsoever affecting, utilized or, in the opinion of the Secretary, necessary for delivery of water hereunder, it being understood that so far as feasible the United States will (1) do so during periods of low water demands and (2) give reasonable notice in advance of such temporary discontinuance or reduction.

(b) Delivery of Colorado River water by the United States under this contract shall be charged to the State of Arizona's apportionment under the aforementioned Supreme Court Decree of March 9, 1964, in Arizona v. California and will discharge to that extent the obligation of the United States to deliver water under the aforementioned contract between the United States and the State of Arizona, dated February 9, 1944.

8.4 Delivery Points. Colorado River water to be furnished to the Contractor pursuant to this contract will be delivered by the United States in the Colorado River at the point of diversion from Lake Havasu where the intake structures of the Havasu Pumping Plant are

constructed. Agua Fria and Upper Gila River system waters will be delivered to the Contractor at New Waddell and Buttes Dams, respectively. Delivery points for other project water supplies and for return flows will be determined by the Contracting Officer after consultation with the Contractor and/or the affected subcontractor therefor.

8.5 Measurement.

(a) The quantity of Colorado River water pumped from Lake Havasu for the project shall be measured by means of measuring devices to be installed as part of the project works. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available, estimate the amount of water delivered to the Contractor.

(b) Deliveries of project water to the various subcontractors shall be measured by means of measuring devices to be installed as part of the project works at the points along the various aqueducts at which such water may be diverted for each of said subcontractors, and/or at the points in the various reservoirs formed by the dams constructed as part of the project works at which such water may be diverted for subcontractors and/or at the points where return flow may be delivered. These points of measurement will be established by the Secretary after consultation with Contractor and the affected subcontractor. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available and after consultation with the Contractor and the affected subcontractor, estimate the amount of water delivered to each such subcontractor. The Secretary shall at all times have access over any lands

and rights-of-way of a subcontractor for the purpose of inspecting and checking said measuring devices.

8.6 Responsibility for Distribution of Water after Leaving Water Supply System. Whether or not the United States operates and maintains the project facilities, the United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water after said water has been diverted from the water supply system. At such time as the Operating Agency assumes responsibility for the OM&R of project works, the responsibility for diversion, carriage, and transportation of the water through the water supply system shall be the sole responsibility of the Operating Agency. Responsibility for distribution of water beyond the water supply system shall be that of the subcontractors to whom said water is delivered from the water supply system. The United States, its officers, agents, and employees, shall not be liable for damage or claim of damage of any nature whatsoever for which there is legal responsibility arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water, and each subcontractor shall hold the United States, its officers, agents, and employees, harmless from any and all such claims.

8.7 Quantity of Water to be Delivered.

(a) The Secretary reserves the right to determine that quantity of Colorado River water to be released each year from Lake Mead for use by the Central Arizona Project pursuant to applicable law, which shall include the quantity of water which may be allocated by the Secretary for use on Indian lands.

(b) The quantity of Colorado River water available under

this contract for project purposes shall not exceed the quantity of water available to Arizona under the aforementioned Supreme Court Decree in Arizona v. California and in Arizona's water delivery contract with the United States after first providing for satisfaction of:

(i) present perfected rights and perfected rights described in Article II(D) of the Decree and the rights of other Federal reservations established prior to September 30, 1968; Provided, however, That the quantities of Colorado River water reserved to satisfy the aforesaid rights shall not, except as provided in said Decree, be reduced under any circumstances or for any reason whatsoever including, without limitation, a temporary use permitted by the Secretary by other water users in Arizona, California, or Nevada, of water reserved pursuant to the foregoing but not needed during any calendar year; And provided further, That no rights to the recurrent use of such water shall accrue by reason of said temporary use; and

(ii) the quantities of water provided for in all water delivery contracts between the United States and water users in Arizona as of September 30, 1968.

(c) The quantity of Colorado River water available under this contract for project purposes, including water for use on Indian lands

shall have the same priority as to delivery as the quantities of Colorado River water delivered pursuant to water delivery contracts, Federal reservations of water, and other arrangements between the United States and water users in Arizona entered into subsequent to September 30, 1968, for use of Colorado River water on Federal, State or privately owned lands in Arizona in total quantities not to exceed 164,652 acre-feet of diversions per year; Provided, however, That the Contractor shall hold the United States, its officers, agents, employees, and successors or assigns, harmless as to any and all claims for damages to persons or to property direct or indirect and of whatever nature, arising out of or which may in any manner be connected with the operation and/or effect of this Subarticle.

(d) The limitation on contracting in Subarticle 8.7(c) above shall not apply to contracts with holders of present perfected rights to Colorado River water in Arizona or to the Secretary's order of November 24, 1982, reserving Colorado River water for the Cibola National Wildlife Refuge. Nothing in Subarticle 8.7(c) shall restrict the right of the Secretary under water service contracts referred to in said Subarticle to terminate and/or reduce any entity's entitlement to Colorado River water and to make that entitlement available to other water users in Arizona.

(e) During any year when the subcontractors cannot use any portion of their entitlement to project water, and such water cannot be resold or exchanged in accordance with the terms and conditions of the water service subcontracts, the Contractor shall have the right in its discretion to resell any or all of such water or to use any or all of such water for ground water recharge purposes, including the subsequent recovery and resale

of such water, subject to Federal law, including but not limited to the Reclamation Reform Act of 1982, State of Arizona law, and such rules and regulations as the Secretary may deem appropriate. Subject to the terms and conditions of water service subcontracts, the water orders of all subcontractors shall be met before any project water is made available to the Contractor under this provision.

8.8 Subcontracts.

(a) The United States shall be a party to subcontracts.

(b) The Secretary and the Contractor shall require in each subcontract that:

(i) unless and until otherwise provided by Congress, water from the Central Arizona Project shall not be made available directly or indirectly for the irrigation of lands not having a recent irrigation history, as determined by the Secretary, except in the case of Indian lands, national wildlife refuges, and, with the approval of the Secretary, State-administered wildlife management areas;

(ii) there be in effect measures, adequate in the judgment of the Secretary and the Contractor, to control expansion of irrigation from aquifers affected by irrigation in the Contractor's service area and to reduce pumping of ground water in the agricultural subcontractors' service areas by the amount of project water received by said agricultural subcontractors;

(iii) the canals and distribution systems through which water is conveyed after its delivery to the subcontractors shall be provided and maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses;

(iv) neither the Secretary, the Contractor nor any subcontractor shall pump or permit others to pump ground water from within the exterior boundaries of the service area of a subcontractor receiving water from the Central Arizona Project for any use outside of said subcontractor's service area unless the Secretary, the Contractor, and such subcontractor shall agree, or shall have previously agreed, that a surplus of ground water exists and that drainage is or was required;

(v) except as otherwise agreed by the Contracting Officer, neither the Contractor nor any subcontractor shall sell or otherwise dispose of or permit the sale or other disposition of any project water, including return flows, for use outside the Contractor's service area;

(vi) irrigation water made available thereunder may be made available by the Secretary for M&I purposes if and to the extent that such water is no longer required by the subcontractor for irrigation purposes and shall be made available in all cases

where lands receiving project water have been converted to municipal and industrial use; Provided, however, That subcontracts effectuating such transfers are subject to the approval of the Secretary and the Contractor, which approval shall not be withheld unreasonably; And provided further, That it shall be deemed unreasonable for the Secretary or the Contractor to withhold such approval on the basis that the right to convert from irrigation to M&I use for a specific development could better be exercised in some other subcontractor's service area. The water so converted from irrigation to M&I purposes will be delivered with the same priority and at the same rate per acre-foot as other M&I water. Likewise, subcontracts for furnishing water for M&I purposes, including, but not limited to, ground water recharge to the extent ground water recharge is consistent with Arizona law, shall provide that, if water to be delivered thereunder is not presently required for such purposes, such water may be made available by the Secretary to other users; Provided, further, That the subcontractor shall be relieved of its payment obligation under its subcontract only to the extent of the amount paid by such other users;

(vii) the acreage limitation provisions of Reclamation Laws shall apply solely to agricultural water service;

(viii) except as specifically provided therein, it shall be the provisions of this contract which shall be controlling in the event of any inconsistency between this contract and any subcontract;

(ix) the subcontractor shall levy all necessary assessments, tolls, and other charges and shall use all of the authority and resources available to the subcontractor to collect the same in order that the subcontractor may meet its obligations thereunder to make in full all payments required under said subcontract on or before the date such payments become due and to meet other obligations under the subcontracts;

(x) the subcontractor establish, maintain, and provide the United States and the Contractor with land, water use, and crop census records.

8.9 Shortages. As provided in Section 301(b) of the Basin Project Act, Article II(B)(3) of the Decree of the Supreme Court of the United States in Arizona v. California, 376 U.S. 340, dated March 9, 1964, shall be so administered that in any year in which, as determined by the Secretary, there is insufficient mainstream Colorado River water available for release to satisfy the annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada, diversions from the mainstream of the

Colorado River for the Central Arizona Project and for other uses in Arizona under contracts or other agreements with the United States executed subsequent to September 30, 1968, shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under contracts existing as of September 30, 1968, with the United States by diversion works heretofore constructed, and by other Federal reservations in California of 4,400,000 acre-feet of Colorado River water, and by users of the same character in Arizona and Nevada. Water users in the State of Nevada shall not be required to bear shortages in any proportion greater than would have been imposed in the absence of said Section 301(b), nor shall said Section affect the relative priorities, among themselves, of water users in Arizona, California, and Nevada which are senior to diversions for the Central Arizona Project, or amend any provisions of said Decree. The aforesaid limitation stated in Section 301(b) shall not apply so long as the Secretary shall determine and proclaim that means are available and in operation which augment the water supply of the Colorado River system in such quantity as to make sufficient Colorado River mainstream water available for release to satisfy annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada.

8.10 Rate of Diversions of Colorado River Water. Subject to (a) the first proviso in Section 301(a) of the Basin Project Act, (b) the provisions of Subarticle 10.6(b) hereof, and (c) the provisions of Subarticle 8.7(a) hereof, any capacity in the Granite Reef Aqueduct in excess of 2,500 cubic feet per second may be utilized in the operations of

the project so as to maximize project benefits; Provided, however, That the use of such capacity shall not result in the annual diversion of a quantity of water in excess of the project's legal entitlement under the Basin Project Act.

8.11 Priority in Case of Shortage.

(a) Subject to the provisions of Section 304(e) of the Basin Project Act and the Secretary's allocation decisions published in the Federal Register on December 10, 1980, and March 24, 1983, any project water as defined in Subarticle 5.27(a) hereof, furnished through project facilities shall, in the event of shortages thereof, be reduced pro rata until exhausted, first for miscellaneous uses and next for agricultural uses, before such project water furnished for M&I uses is reduced. Thereafter, such project water for M&I uses will be reduced pro rata among all M&I water users. Each subcontract or other water delivery arrangement entered into pursuant to this contract shall so provide. This article shall not apply to Indian uses; Provided, however, That the relative priorities between Indian and non-Indian uses shall be as determined by the Secretary. Notwithstanding the provisions of this Subarticle, project water made available as a result of construction and operation of modifications to Roosevelt Dam as part of Plan 6 shall be distributed as provided in the Plan 6 Funding Agreement, and shall not be subject to reduction in the event of shortages of other project water supplies.

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

8.12 No Guarantee of Availability of Water. The United States

assumes no responsibility with respect to the quantity of water available for delivery pursuant to this contract. In no event shall the United States, its officers, agents, or employees, be liable for any damages, direct or indirect, of whatsoever nature, arising out of or in any way connected with any suspension or reduction in the delivery of water pursuant to this contract or with any shortage in the quantity of water available for delivery hereunder or to any subcontractor for any cause whatsoever including, but not limited to, drought, delay in the construction of the Navajo Project, the failure of the Navajo Project to be completed, or the lack of power for pumping.

8.13 Secretarial Control of Return Flow.

(a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of the Contractor as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for project use return flows within the boundaries of Contractor if in his judgment such return flow is not being put to a beneficial use. Any subcontractor may sell its return flow; Provided, however, That except as otherwise agreed by the Contracting Officer, such return flow may not be sold for use outside the Contractor's exterior boundaries; And provided further, That if the price received for such return flow is higher than the price paid for such project water, the amount of the excess price shall be paid by such subcontractor to the Contractor for application against the Contractor's repayment obligation to the United States.

(b) Any return flow captured by the United States and determined by the Secretary to be suitable and available for use on lands

within the service area and/or by any subcontractor therein may be delivered by the United States to a subcontractor as a part of the water supply for which the subcontractor contracts hereunder and such water shall be accounted and paid for pursuant to the provisions hereof.

8.14 Water and Air Pollution Control. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

8.15 Quality of Water. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of project water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer or the Operating Agency. Neither the United States nor the Operating Agency warrants the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

8.16 Exchange Water. Where the Secretary determines that a subcontractor is physically able to receive Colorado River mainstream water in exchange for or in replacement of existing supplies of surface water from sources other than the Colorado River to provide water supplies for users upstream from New Waddell, Modified Roosevelt and Buttes Dams, the Secretary may require that said subcontractor agree to accept said mainstream water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act.

8.17 Rights Reserved to the United States to Have Water Carried by Project Facilities. As a condition to the construction of project facilities and the delivery of water hereunder, the Contractor agrees that all project facilities will be available for the diversion, transportation, and carriage of water for Indian and non-Indian uses pursuant to arrangements or contracts therefor entered into on their behalf with the Secretary. In the event the responsibility for the OM&R of project facilities is transferred to and assumed by the Operating Agency, such transfer shall be subject to the condition that the Operating Agency shall divert, transport, and carry such water for such uses pursuant to the provisions of the aforesaid arrangements or contracts; Provided, however, That the aforesaid arrangements or contracts will include provisions for the payment of applicable construction costs and OM&R costs in accordance with Articles 9.3 and 9.6 of this contract.

8.18 Wheeling Non-Project Water. After taking into consideration the water delivery requirements of contracts for project water service and subject to availability of project capacity, non-project water may be wheeled through project facilities pursuant to wheeling agreements between the Contractor and the entity desiring to use project facilities for wheeling purposes. All such agreements shall be subject to the approval of the Contracting Officer who shall consider, among other things, the impact that the wheeling of such non-project water will have on the quality of project water. The Contractor and the Contracting Officer shall jointly develop a standard form of wheeling agreement including the rate structure for wheeling non-project water. All wheeling charges shall be paid to the Contractor by the entity contracting for the wheeling of non-project water.

The Contractor shall be entitled to retain revenues from wheeling charges sufficient to cover all OM&R costs associated with wheeling such non-project water, plus an administrative charge to be jointly determined by the Contractor and the Contracting Officer. All revenues from wheeling charges in excess of the OM&R costs and administrative charges shall be remitted by the Contractor to the Contracting Officer and deposited into the Development Fund.

8.19 Use of Project Power to Wheel Non-Project Water. If the energy requirements necessary for the pumping of project water are met and subject to the requirements of the Navajo Power Marketing Plan published in the Federal Register on December 21, 1987, project power may be used to wheel non-project water through project facilities under such conditions of use, including amounts, times of use, losses, costs, and other conditions as are established by the Contractor and approved by the Contracting Officer.

9. PAYMENT OF PROJECT COSTS ALLOCATED TO CONTRACTOR

9.1 Allocation of Construction Costs.

(a) Upon completion of each construction stage, the Contracting Officer will allocate costs to the various project purposes using the separable costs-remaining benefits procedure.

(b) For repayment purposes the reimbursable cost allocated to irrigation and M&I water by the separable costs-remaining benefits procedure will be combined and will hereinafter be termed the "water supply allocation." Upon completion of each construction stage, and at the periodic intervals specified in Subarticle 9.3(d), suballocation of the water supply allocation will be made to the irrigation and M&I water functions proportional to the water estimated to be used for each purpose

during the repayment period of each construction stage. The cost thus suballocated to the irrigation function will hereinafter be termed the "interest-free allocation." The cost thus suballocated to the M&I water function shall be added to the cost allocated to the commercial power function, plus interest during construction for both, and the sum will hereinafter be termed the "interest-bearing allocation."

(c) During construction, simple interest at the rate of 3.342 percent per annum shall be charged on costs allocated to the interest-bearing function as adjusted by the Secretary (i.e., net disbursements reduced by contract holdbacks, revenues applied to construction cost, and nonreimbursable expenses financed from construction funds). The total amount of all interest thus accumulated through the construction period prior to the date of completion of each construction stage shall be added to and become part of the actual construction cost of each construction stage. Interest during construction shall not accrue during any period in which construction is deferred or postponed by the United States as a result of a national emergency, as determined by the Secretary, if authority to forego such interest exists or is made available to the Secretary.

9.2 Repayment Concepts.

(a) Costs suballocated to non-Indian irrigation water will be paid by the subcontractors to the Contractor on the basis of their ability to pay as determined by the Secretary.

(b) Costs allocated to commercial power and costs suballocated to M&I water use shall be combined and repaid with interest at a rate of 3.342 percent per annum on the unpaid balance.

(c) Reimbursable costs allocated to recreation and fish

and wildlife are anticipated to be covered by a separate contract and repaid by the beneficiaries thereof.

(d) Repayment of costs allocated to irrigation of Indian lands shall be governed by the provisions of Section 402 of the Basin Project Act.

(e) Repayment of the project will occur by construction stages, with each stage having a separate 50-year repayment schedule. Upon completion of each cost allocation study referred to in Subarticle 9.1(a), subsequent to the initial study associated with the first construction stage, the Contractor's repayment obligation and the obligation allocated to each construction stage will be adjusted based on the latest cost allocation study, and the Contractor will be provided with a revised repayment schedule for the project and each construction stage. The Contracting Officer will adjust previous principal and interest payments made by the Contractor to reflect the new repayment schedule. For each year where an adjustment in payments is necessary, there will be an over or underpayment which will accrue with interest at the rate of 3.342 percent per annum (compounded annually) to the adjustment date. If the adjustment indicates that the Contractor overpaid principal and interest, the Contractor shall be entitled to a credit against its next payments to the United States. Conversely, if the Contractor owes additional principal and interest to the United States, such amount shall be paid to the United States by the Contractor within 12 months of receipt of a statement therefor from the Contracting Officer. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

9.3 Contractor's Construction Cost Repayment Obligation.

(a) The Contractor's repayment obligation shall consist of the total cost allocated to the water supply and power functions plus OM&R during construction and interest during construction on costs allocated to the M&I water and power functions, but shall not include costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors. Such entities shall include but not be limited to Indian tribes and councils in central Arizona receiving project water and the New Mexico recipients of water service from Hooker Dam or suitable alternative. The costs to be excluded shall be calculated as follows:

(i) Costs excluded from the Contractor's repayment obligation for New Mexico water service shall be determined by multiplying the project costs allocated to the water supply function by the ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to water users in Arizona in exchange for water delivered to users in New Mexico from or by means of project works, by the total quantity of Colorado River water projected to be delivered by the project throughout the overall repayment period.

(ii) The amount of other project costs which shall be excluded from the Contractor's repayment obligation shall be determined by multiplying the

project costs allocated to the water supply function by a ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to entities other than the Contractor, the subcontractors, and those users in New Mexico to whom water has been made available through the construction of Hooker Dam or suitable alternative by the total quantity of project water projected to be delivered throughout the overall repayment period; Provided, That project water projected to be delivered to such users will be computed based on an assumption of full development not later than the year 2005.

(b) The costs determined under Subarticles 9.3(a)(i) and (ii) above shall be subtracted from the water supply costs obtained from the separable costs-remaining benefits procedure to determine the Contractor's water supply costs. The Contracting Officer shall suballocate the Contractor's water supply costs to each of the construction stages based on the ratios obtained by dividing the allocable cost of the construction stage by the allocable cost of the project (see Operation 1, Exhibit "A"). The water supply costs assigned to each construction stage are then further suballocated between irrigation and M&I water use in proportion to projected total water deliveries to each function over the 50-year repayment period of each construction stage (Operation 2, Exhibit "A"). The summarization of the suballocations to each construction stage determines the total water

supply cost to be assigned to irrigation and M&I water use (Operation 3, Exhibit "A"). To determine the Contractor's repayment obligation, the Contractor's water supply suballocation to irrigation and M&I water uses, and the power allocation from the separable costs-remaining benefits procedure, shall each be adjusted for any revenues received by the United States prior to the notice(s) of completion and for any contributions received by the United States under the Plan 6 Funding Agreement for the features constructed in that stage, and for the 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and pumping plants (see Article 9.7) to determine the net amount of each function assigned to the Contractor (Operation 4, Exhibit "A"). The Contractor's repayment obligation shall be the summation of the net amount for each function.

(c) Once the Contractor's estimated or final repayment obligation has been determined by the Contracting Officer, the obligation shall be allocated to each construction stage based on the ratio obtained by dividing the allocable cost of each construction stage by the allocable cost of the project. Each construction stage will have a separate 50-year repayment period. The repayment obligation for each stage will be divided into interest-bearing and interest-free components. The interest-free component shall be the amount allocable to irrigation purposes for the stage. The interest-bearing component will be the amount obtained by subtracting the irrigation allocation for the stage from the obligation for the stage. The principal payments for each stage shall be determined by applying the percentages in Subarticle 9.3(f) to the repayment obligation for each stage. The total payment for each stage for any year shall be equal to the principal payment plus interest at the rate of 3.342 percent

per annum on the unpaid interest-bearing component of the repayment obligation for each stage. For the water supply system, the portion of each principal payment which is made by the Contractor from irrigation revenues received by the Contractor each year will be used by the United States to reduce the interest-free obligation. The remaining portion of the principal payments made by the Contractor each year for the water supply system will be used by the United States to reduce the interest-bearing obligation, and once the interest-bearing obligation has been retired, the entire principal payment made by the Contractor will be applied by the United States toward the interest-free obligation. For the other construction stages, the entire principal payment made by the Contractor each year for such stages will be applied by the United States to reduce the interest-bearing obligation first, and once such obligation has been retired, to reduce the interest-free obligation.

(d) At 7-year intervals following the determination of the Contractor's repayment obligation for the water supply system, or at more frequent intervals if it becomes apparent to the Contracting Officer that a significant change in water use has or will occur, until such time as the interest-bearing obligation for each construction stage has been repaid, the Contracting Officer will re-estimate the proportions of total water deliveries to irrigation and M&I water use over the 50-year repayment period for each stage. At such intervals, the Contracting Officer will adjust the original interest-bearing and interest-free allocation for each stage based on the new estimates and recalculate all preceding interest payments. Differences between amounts owed and amounts paid by the Contractor shall be adjusted by the Contracting Officer, who shall apply a credit against the

Contractor's next payment due or notify the Contractor of the additional amount due, as the case may be. All such adjustments shall include interest at the rate of 3.342 percent per annum (compounded annually). Any additional payments required from the Contractor shall be made within 12 months of the Contractor's receipt of a statement from the Contracting Officer therefor. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

(e) The Contracting Officer will notify the Contractor of (i) its estimated repayment obligation when construction of the first construction stage is substantially complete and upon completion of each subsequent construction stage, and (ii) the actual repayment obligation when the final construction stage has been completed, as determined by the Contracting Officer. In the event that the project ultimately consists only of the water supply system, New Waddell Dam, and Modified Roosevelt Dam, the Contractor's actual repayment obligation shall be limited to $2.0 billion. If prior to completion of construction of such features the Contracting Officer determines that the Contractor's repayment obligation for such features will exceed $2.0 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation. If construction of any other construction stage will result in an increase in the Contractor's repayment obligation by an amount equal to or less than the respective amount identified in Exhibit "B," which is attached hereto and made part of this contract, the Contractor's repayment ceiling may, after consultation with the Contractor, be increased by the

Contracting Officer by an amount equal to or less than the respective amount identified in Exhibit "B" by written notice thereof from the Contracting Officer to the Contractor. If construction of such other construction stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B," the Contracting Officer shall consult with the Contractor and the Contractor and the Contracting Officer shall agree upon one of the following courses of action prior to initiation of construction of such construction stage: (1) that additional repayment ceiling be made available from other construction stages, in which event the Contractor's repayment ceiling will be increased to the agreed-to amount by written notice from the Contracting Officer to the Contractor; or (2) that this contract be renegotiated to increase the Contractor's repayment ceiling; Provided, That these courses of action shall also apply in the event that, prior to completion of construction of such stage, the Contracting Officer determines that the construction of such stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B."

(f) Annual percentages of the repayment obligation for each construction stage shall be those set out in the following schedule or any revision thereof mutually agreed upon:

Repayment Year	Percent of Repayment Obligation (Annual)
1-7	1.0
8-14	1.3
15-21	1.6
22-28	2.0
29-35	2.6
36-42	2.7
43-49	2.7
50	2.7

(g) In the event that the Secretary contracts for delivery of non-project water under the provisions of Article 10.1, capital charges associated with such delivery shall be calculated, charged, and utilized in the same manner as capital charges deposited in the Development Fund pursuant to Article 8.18.

9.4 Payment of Contractor's Construction Cost Repayment Obligation.

(a) The Contractor shall make annual payments to the United States, to be credited to the Development Fund, which shall be sufficient, when combined with accruals from the other sources described in Section 403(f) of the Basin Project Act, the Hoover Power Plant Act of 1984, and other miscellaneous revenues, including but not limited to net wheeling charges, to effect repayment of the repayment obligation for each construction stage within a period of not more than 50 years beginning with the year following substantial completion of each construction stage. The Contractor's first payment shall be due on or before January 15 of the year following the year in which the Secretary announces the substantial completion of each construction stage. Annual payments thereafter shall be due on or before January 15 of each following year.

(b) The Contractor agrees to make annual payments calculated by the Secretary as follows:

(i) Calculate the annual principal payments required by the schedule in Subarticle 9.3(f) or any revision thereof for each construction stage.

(ii) Add to (i) the annual interest, at 3.342 percent, on the unpaid balance of the interest-bearing

allocation for each construction stage.

(iii) Determine the total amount of all interest and principal payments due for all construction stages.

(iv) Subtract therefrom the revenues estimated to be available from the Development Fund anticipating a zero balance at the end of each year in the Development Fund.

(v) Make adjustments for differences between estimated and actual revenues for the preceding year.

(c) On or before each December 15, beginning with December 15 of the year in which the Secretary notifies the Contractor of the substantial completion of the first construction stage, the Secretary will notify the Contractor of the amount of the annual payment due on the following January 15, which has been determined by the Secretary on the basis of the aforesaid calculation.

(d) The Contractor may make additional payments on the repayment obligation at any time subject to such terms and conditions as may be agreed upon by the Contractor and the Contracting Officer; Provided, however, That all interest due is paid at the same time, whereupon appropriate adjustments in the schedule of future payments will be made by the Secretary, who shall as promptly as possible give the Contractor written notice of the adjusted repayment schedule.

(e) It is understood and agreed that the Contractor shall be obligated for the payments set forth in Subarticle 9.4(a) hereof and that regardless of the delinquency or default in payment of any charges

due to the Contractor from any subcontractor, or a diminution in the water supply available to the Contractor, or regardless of any other reason, the Contractor shall complete repayment of each construction stage within a 50-year period beginning in the year following the announcement by the Secretary of substantial completion of such construction stage.

9.5 Commercial Power Rates. The Secretary will, consistent with applicable law, periodically review and provide for appropriate adjustments in the rates established for the sales of power and energy, revenues from which contribute to the Development Fund.

9.6 Other Costs Borne by the Contractor.

(a) In addition to the payments provided for in Article 9.4 hereof, and subject to the provisions of Subarticle 9.6(d) hereof, during such periods as the United States operates and maintains completed construction stages, the Contractor shall make advance payments for OM&R costs incurred by the United States. The United States will furnish the Contractor with an estimate in writing at least 6 months prior to substantial completion of construction of the water supply system, of the OM&R cost due from the Contractor to the end of the then current year, together with an estimate of such cost for the calendar year immediately following. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer, the Contractor shall advance to the United States the payments for the estimated OM&R cost to the end of the then current year and without further notice or demand shall on December 15 of the then current year and on June 15 of the following year advance to the United States in equal semiannual installments the Contractor's share of the estimated cost, including supervision and

administrative expense for the OM&R of the water supply system. Advance payments shall be made in subsequent years by the Contractor to the United States on the basis of estimates to be furnished by the United States on or before November 15 preceding said subsequent year and the advances of said payments shall be due and payable in equal semiannual payments on the following December 15 and June 15. Said OM&R costs are the total annual OM&R costs of completed construction stages which are allocated to the irrigation and M&I water supply functions less (i) the costs described in Subarticle 9.6(c) hereof, and (ii) an amount determined by multiplying the total of said annual costs by the ratio obtained by dividing the estimated amount of project water projected to be delivered in the subsequent year to entities other than the Contractor, the subcontractors, and those entities in New Mexico to which project water will be made available from Hooker Dam or suitable alternative, by the total amount of project water estimated to be delivered for use in that year.

(b) Differences between actual OM&R costs and the estimated costs shall be determined by the Contracting Officer and shall be adjusted in next succeeding estimates; Provided, however, That if in the opinion of the Contracting Officer the amounts advanced by the Contractor for any year are likely to be insufficient to pay the above-mentioned OM&R costs during such year, additional and sufficient sums of money shall be paid forthwith by the Contractor to the United States upon notice thereof and demand therefor by the Contracting Officer; Provided, further, That the United States will give Contractor reasonable notice in advance of any such deficiency.

(c) The Contractor's obligation to pay said OM&R costs

of completed construction stages will be reduced to the extent that project water is made available for use in New Mexico following completion of Hooker Dam or suitable alternative. Said reduction will be in the proportion which the quantity of project water projected to be delivered to water users in Arizona, in exchange for Gila River system waters delivered to water users in New Mexico from or by means of project works, bears to the total quantity of Colorado River water projected to be delivered to the project that year.

(d) In the event that responsibility for OM&R of project facilities is transferred to and assumed by the Contractor, the Contractor shall be relieved of the obligation to make OM&R payments associated with such facilities under Subarticle 9.6(a) of this contract. In that event, the United States shall pay or provide for payment of OM&R costs associated with delivery of water to entities other than the Contractor and the subcontractors. Such costs shall be computed in accordance with Subarticle 9.6(a) of this contract. If the Contractor does not receive payment in advance for such costs, the Contractor shall have no obligation to deliver such water.

(e) During the Hoover Dam cost-repayment period, the Contractor shall pay to the United States the sum of $0.25 for each acre-foot of water pumped from Lake Havasu for miscellaneous and M&I water purposes as determined by the Contracting Officer. The quantity of water pumped for such purposes will be determined by the Contracting Officer at the end of each calendar year and the Contractor notified of the amount due by March 1 of each subsequent year. Payment shall be due on May 1 following notification. Said payment shall be credited to the Colorado River Dam Fund

established by Section 2 of the Boulder Canyon Project Act.

9.7 Repayment of Costs of Excess Capacity in Granite Reef Aqueduct. The costs of providing any capacity in the Granite Reef Aqueduct and pumping plants in excess of 2,500 cubic feet per second shall be repaid by Contractor from funds available to Arizona pursuant to the provisions of Section 403(f) of the Basin Project Act, or by funds from sources other than the Development Fund.

9.8 Ad Valorem Taxes, Assessments, Tolls, and Other Charges. Within the legal limits available to it, the Contractor shall levy ad valorem taxes upon the taxable property within the service area of the Contractor at rates determined necessary by the Contractor to raise funds which, together with the revenues from the sale of water and such financial assistance from the Development Fund as the Secretary determines is available therefor, are sufficient to meet the obligations of the Contractor to make in full all payments to the United States on or before the date such payments become due and to meet its other obligations under this contract.

9.9 Continuation of Payments After Project Payout. Following payment to the United States of the Contractor's final payment for the last construction stage, the Contractor shall continue to make annual payments to the United States to be credited to the Development Fund in amounts equal to the average annual principal payment for the project during the overall repayment period. In the event that no augmentation project, as contemplated in the Basin Project Act, has been authorized or is under active consideration by the Congress at the time project construction costs have been repaid in full, payments under this formula will be not required; Provided, however, That payments will commence after repayment of the

project costs pursuant to the formula, or any adjustment thereof agreed to by the parties, at such time as an augmentation project is authorized by Congress and the costs thereof allocated to the Contractor are determined by the Secretary.

9.10 Defaults.

(a) The Contractor shall pay a penalty on payments, installments or charges which become delinquent, computed at the rate of 1 percent per month on the amount of such delinquent payments, installments, or charges from and after the date when the same become due until paid.

(b) No water shall be furnished to the Contractor during any period in which the Contractor may be in arrears more than 12 months in the payments to the United States required by Article 9.4 hereof.

(c) All rights of action for breach of this contract are reserved to the United States as provided by Federal law.

10. GENERAL PROVISIONS

10.1 Other Contracts. The Secretary reserves the right to contract directly with other water using entities concerning water supply through project facilities. In the event this occurs, the provisions of Article 8.17 hereof shall be applicable.

10.2 Title to Project Works. Title to all water supply system works and all project facilities constructed pursuant to the Basin Project Act and this contract shall be and remain in the United States until otherwise provided by Congress.

10.3 Reserve Funds.

(a) (1) Commencing with notice of transfer of OM&R for the Granite Reef Aqueduct, including the Havasu Pumping Plant, the Contractor

shall accumulate and maintain an emergency OM&R reserve fund, which the Contractor shall keep available to meet costs incurred during periods of interruption of water service.

(ii) The Contractor shall accumulate the reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $400,000 in any year in which the fund balance is less than $4,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for such purposes as those identified in Subarticle 10.3(a)(iv) hereof. Such annual deposits and the accumulation of interest and dividends to the reserve fund shall continue until $4,000,000 is accumulated. Interest and dividends accruing to fund balances shall be added to the fund in any year when the fund balance is greater than $4,000,000; Provided, That in no event shall the fund be increased to an amount greater than the actual amount of fixed OM&R costs for the preceding year as mutually determined by the Contractor and the Contracting Officer. Any balance in the fund in excess of the amount of fixed OM&R costs for the previous year shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted in consideration of the risk and uncertainty stemming from the size and complexity of the project, the size of the annual OM&R budget, additions to, deletions from, or changes in project works, or OM&R costs not

contemplated when this contract was executed.

(iv) The Contractor may make expenditures from such reserve fund only for meeting unforeseen and extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs (in situations where recurrence of severe operation and maintenance problems can be avoided or eliminated). Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) During any period in which any of the project works are operated and maintained by the United States, the reserve fund shall be available for like use by the United States.

(vi) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement indicating the principal and accumulated interest in the emergency OM&R reserve fund as of December 31 of the preceding year.

(b) (i) No later than 1 year following the Contractor's last construction advance under the Plan 6 Funding Agreement, the Contractor shall accumulate and maintain a repayment reserve fund to help assure payments to the United States under this contract.

(ii) The Contractor shall accumulate such reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $4,000,000 in any year in which the fund balance is less than $40,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for the

purpose for which it was established. Such annual deposits and the accumulation of interest to the reserve fund shall continue until $40,000,000 is accumulated. Any balance in the fund in excess of $40,000,000 shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted.

(iv) Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement of the principal and accumulated interest in the repayment reserve fund as of December 31 of the preceding year.

10.4 Recreational Use of Water Facilities.

(a) The enhancement of recreational opportunities in connection with the project works authorized pursuant to Title III of the Basin Project Act shall be in accordance with the provisions of the Federal Water Project Recreation Act, 79 Stat. 213, dated July 9, 1965, except as provided in Subarticle 10.4(b) hereof.

(b) Recreational development at Orme Dam and Reservoir shall be governed by the provisions of Section 302(d) of the Basin Project Act.

10.5 Confirmation of Contract.

(a) The Contractor, after the execution of this contract,

shall promptly seek to secure a decree of a court of competent jurisdiction of the State of Arizona confirming the execution of this contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor. This contract shall not be binding on the United States or the Contractor until such final decree has been entered.

(b) This contract shall be indivisible for purposes of validation and shall not be binding on the United States or the Contractor unless validated pursuant to the provisions of Subarticle 10.5(a) hereof in each and all of its terms and conditions.

10.6 Rules, Regulations, and Determinations.

(a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Reclamation Law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation Law.

(b) The Contracting Officer, after an opportunity has been offered to the Contractor for consultation, shall have the right to make rules, regulations, and determinations consistent with the provisions of this contract, the laws of the United States and the State of Arizona, including, without limitation, rules, regulations, and determinations relative to maximizing project benefits from pumping from Lake Havasu, the rate and schedule of pumping therefrom and the rate and schedule of pumping at the Granite Reef pumping plants, to add to or modify said rules, regulations, and determinations as may be deemed proper and necessary to

carry out this contract, and to supply necessary details of its administration which are not covered by ~~express~~ provisions of this contract. The Contractor and each subcontractor shall observe such rules, regulations, and determinations and each subcontract shall so provide.

(c) Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor and shall be conclusive upon the parties.

10.7 Books, Records, and Reports. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: the Contractor's financial transactions, water supply data, project operation, maintenance and replacement logs, project land and right-of-way use agreements, and other matters specifically relating to this contract that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

10.8 Notices. Any notice, demand, or request authorized or

required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States, when mailed, postage prepaid, or delivered to the General Manager of the Contractor, 23636 North 7th Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

10.9 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

10.10 Changes in Contractor's Organization. While this contract is in effect, no change shall be made in the Contractor's organization, by exclusion of lands, by dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written consent; Provided, however, That approval is hereby given to the inclusion of other counties as part of Contractor's service area, except, however, that the United States shall not be required, under this contract, to construct project facilities to serve lands within said additional counties.

10.11 Assignment Limited--Successors and Assigns Obligated. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this

contract or any part or interest therein shall be valid until approved in writing by the Contracting Officer.

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

10.13 Equal Opportunity. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment

without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Contracting Officer, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

10.14 Compliance With Civil Rights Laws and Regulations.

(a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures

necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

10.15 Officials Not to Benefit. No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

11. STATUS OF DECEMBER 15, 1972 CONTRACT

Upon judicial confirmation of this contract, the December 15, 1972 contract entitled "Contract Between the United States and the Central Arizona Water Conservation District For Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), shall be superseded and replaced by this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
Assistant Secretary-Water and Science
Department of the Interior

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

ATTEST:

Marilyn H. Rinstadt
Secretary

By _____
President

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 1 SUBALLOCATION OF CONTRACTOR'S WATER SUPPLY COSTS TO CONSTRUCTION STAGES:

Construction Stage	Allocable Cost ($M)	Percentage	Water Supply Cost ($M)
Water Supply System	1,500	71%	1,280
New Waddell	300	14%	256
Cliff Alternative	100	5%	85
Tucson Term. Storage	60	3%	51
Hooker Alternative	50	2%	43
Buttes	100	5%	85
Total	2,110	100%	1,800

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 2 SUBALLOCATION OF WATER SUPPLY COST:

Construction Stage	Allocable Cost ($M) Construction	IDC	Water Distribution (%) Irrigation	M&I
Water Supply System	1,280	200	58%	42%
New Waddell	256	40	54%	46%
Cliff Alternative	85	10	54%	46%
Tucson Term. Storage	51	10	53%	47%
Hooker Alternative	43	10	50%	50%
Buttes	85	10	50%	50%
Total	1,800	280	100%	

	Construction Cost Distribution ($M) Irrigation	M&I	IDC Cost Distribution ($M) Irrigation	M&I
Water Supply System	742	538	116	84
New Waddell	138	118	22	18
Cliff Alternative	46	39	5	5
Tucson Term. Storage	27	24	5	5
Hooker Alternative	21	21	5	5
Buttes	43	43	5	5
Total	1,017	783	158	122

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 3 DETERMINATION OF TOTAL WATER SUPPLY COST:

	Total Cost Distribution ($M)		
	Irrigation	M&I	Total
Water Supply System	742	622	1,364
New Waddell	138	136	274
Cliff Alternative	46	44	90
Tucson Term. Storage	27	29	56
Hooker Alternative	21	26	47
Buttes	43	48	91
Total	1,017	905	1,922

Irrigation = Irrigation construction cost
M&I = M&I construction cost + M&I IDC

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 4 ADJUSTMENTS TO ALLOCATED COST:

	Irrigation Cost ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)	M&I ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)
Water Supply System	742	-4		33	622	10		32
New Waddell	138		-45		136		-135	
Cliff Alternative	46				44		-30	
Tucson Term. Storage	27				29			
Hooker Alternative	21				26			
Buttes	43				48			
Total	1,017	-4	-45	33	905	10	-165	32

	Power Cost ($M)	Interim Operations ($M)	Total ($M)
Water Supply System	328	-100	1,663
New Waddell	61		155
Cliff Alternative	20		80
Tucson Term. Storage	12		68
Hooker Alternative	9		56
Buttes	19		110
Total	449	-100	2,132

EXHIBIT "B"

CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD) REPAYMENT CEILING (Billions of Dollars)

		Remaining Potential Stages				
	Water Supply System, New Waddell, and modified Roosevelt Dams	Tucson Terminal Storage	Cliff Dam Alternative	Hooker Dam Alternative	Buttes Dam	Total
Amount allocable to CAWCD repayment ceiling based on October 1988 prices.	$1.681	$.058	$.060	$.035	$.100	$.253
Inflation (4%) on features remaining to be completed, plus an amount for unforeseen contingencies (.82 of the inflation component)[1]	.100	.032	.035	.047	.133	$.247
Additional costs which could be allocated to CAWCD if the Gila River Indian Community does not take CAP water	.259	----	----	----	----	----
	----	----	----	----	----	----
Total	$2.040	$.090	$.095	$.082	$.233	$.500
Rounded	$2.000					$.500

[1] Inflation calculations based on the assumption that Tucson terminal storage and the Cliff Dam alternative are completed in 1995, and that the Hooker Dam alternative and Buttes Dam are completed in 2002.

Exhibit "B"

Assignment among RWCD, CAWCD and The United States
(See Exhibit "12.3." to Agreement)

EXHIBIT "12.3"

RWCD ASSIGNMENT TO CITIES

ASSIGNMENT

THIS AGREEMENT, dated as of February 12, 1988, is made and entered into by and among the United States of America acting through the Secretary of the Interior, the Central Arizona Water Conservation District, the Roosevelt Water Conservation District, the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa and Phoenix, and the Arizona Town of Gilbert.

R E C I T A L S

A. The United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members.

B. The foregoing settlement agreement requires the assignment by the Roosevelt Water Conservation District to the Cities and Town participating in the settlement of a portion of the agricultural water supply available to Roosevelt Water Conservation District from the Central Arizona Project.

C. The settlement agreement further requires the Secretary of the Interior, in certain events, to make available to the Cities and Town participating in the settlement a portion of the

agricultural water supply otherwise available from the Central Arizona Project.

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix and the Town of Gilbert.

(b) "City" shall mean any one of the Cities.

(c) "Contractor" shall mean the Central Arizona Water Conservation District.

(d) "Repayment Contract" shall mean the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 15, 1972 (Contract No. 14-06-W-245), and any amendment or revision thereof.

(e) "Secretary" and "Contracting Officer" shall mean the Secretary of the Interior or his duly authorized representative.

(f) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America; the Salt River Pima-Maricopa Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District.

(g) "Subcontract" shall mean the Subcontract among the United States, the Central Arizona Water Conservation District, and the Roosevelt Water Conservation District, Providing for Water Service, Central Arizona Project, dated [to be supplied] (Contract No. [to be supplied]).

(h) "Subcontractor" shall mean the Roosevelt Water Conservation District.

All other terms used in this Agreement which are defined in the Repayment Contract or the Subcontract shall have the meanings ascribed to them in the Repayment Contract and the Subcontract.

2. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, and for each Year thereafter until the term of the Subcontract expires, Subcontractor hereby assigns to the Cities an amount of Project Water, to be taken from Subcontractor's annual entitlement to Agricultural Water under Article 4.13 of the Subcontract, equal to the lesser of (a) 5,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, or (b) such amount of Project Water as is available from Subcontractor's annual entitlement to Agricultural Water after first providing for delivery to the Subcontractor, at the Subcontractor's Project turnout, of 8,000 acre-feet of Agricultural Water.

3. (a) If and when, as a result of a reduction in the acreage of eligible lands in Subcontractor's service area,

Subcontractor's entitlement to Agricultural Water under Article 4.13 of its Subcontract is insufficient to provide for the delivery to the Cities at the Cities' Project turnouts of a total amount of 3,000 acre-feet of Project Water (after first providing for the delivery of Subcontractor's entitlement to Agricultural Water as determined in accordance with subparagraph (b) of this Paragraph) in a Year in which the total supply of Agricultural Water available for delivery from the Project is 450,000 acre-feet or more, the Secretary shall thereafter make available for delivery to the Cities from the total supply of Agricultural Water otherwise available for delivery from the Project in each Year an amount of Project Water equal to the difference between (i) 3,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, and (ii) the amount of Project Water available to the Cities as a result of the assignment made in Paragraph 2 of this Agreement.

(b) If and when the provisions of subparagraph (a) of this Paragraph are implemented, Subcontractor's entitlement (i) to 8,000 acre-feet of Agricultural Water under subparagraph (b) of Paragraph 2 of this Agreement or (ii) to such lesser amount of Agricultural Water as may be determined in conformance with the provisions contained in subparagraph (d) of Paragraph 12 of this Agreement shall be subject to reduction in an amount equal to Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract multiplied by the amount of Agricultural Water made available by the Secretary for delivery to the Cities pursuant to subparagraph (a) of this Paragraph.

(c) Attached hereto as Appendix A are examples of how Paragraphs 2 and 3 of this Agreement a- intended to operate under various conditions.

4. (a) Project Water made available to the Cities pursuant to Paragraph 2 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	972 acre-feet per Year;
City of Glendale	=	682 acre-feet per Year;
City of Scottsdale	=	23 acre-feet per Year;
City of Tempe	=	23 acre-feet per Year;
City of Mesa	=	627 acre-feet per Year;
City of Phoenix	=	1,136 acre-feet per Year;
Town of Gilbert	=	1,537 acre-feet per Year;
TOTAL	=	5,000 acre-feet per Year.

(b) Project Water made available to the Cities pursuant to Paragraph 3 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	583 acre-feet per Year;
City of Glendale	=	409 acre-feet per Year;
City of Scottsdale	=	14 acre-feet per Year;
City of Tempe	=	14 acre-feet per Year;
City of Mesa	=	376 acre-feet per Year;
City of Phoenix	=	682 acre-feet per Year;
Town of Gilbert	=	922 acre-feet per Year;
TOTAL	=	3,000 acre-feet per Year.

(c) Prior to the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted by mutual agreement of such Cities. On and after the enforceability date of the Settlement Agreement, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted only by mutual agreement of such Cities, the Contractor, and the United States.

(d) In the event this Agreement shall become effective and any City ("designating City") entitled to receive water hereunder is unable to take delivery of such water by virtue of not having constructed a treatment plant capable of taking deliveries of water from the Central Arizona Project, the designating City shall in writing designate one or more Cities which are also parties to this Agreement to act as the interim recipients ("interim recipient") of the designating City's water, and water made available to the designating City under this Agreement shall be delivered by Contractor to the interim recipient(s) until such time as the designating City's treatment plant is completed and ready to take delivery of and treat deliveries of water from the Central Arizona Project. The designating City shall notify Contractor and Subcontractor of any such designation and shall also provide Contractor and Subcontractor with copies of any agreement between the designating City and the interim recipient(s). Any

such agreement shall not be inconsistent with any provisions of the Repayment Contract, the Subcontract, or this Agreement.

5. Notwithstanding anything in the Repayment Contract or the Subcontract to the contrary, Project Water made available to the Cities pursuant to this Agreement may be used for any M&I Water uses including but not limited to ground water recharge.

6. Notwithstanding any schedule or other instruction to the contrary, Project Water made available to the Cities pursuant to this Agreement, including any water delivered under a designation agreement entered into pursuant to Paragraph 4(d) hereof, shall be accounted for and treated by the Contractor and the Contracting Officer as having been scheduled for delivery by the Cities, and delivered to the Cities, prior to the delivery of any portion of the Cities' entitlements to Project M&I Water under the Cities' M&I Water service subcontracts (City of Chandler, Contract No. 5-07-30-W0070; City of Glendale, Contract No. 5-07-30-W0062; City of Scottsdale, Contract No. 5-07-30-W0063; City of Tempe, Contract No. 5-07-30-W0061; City of Mesa, Contract No. 5-07-30-W0060; City of Phoenix, Contract No. 5-07-30-W0059; Town of Gilbert, Contract No. [to be supplied]), prior to the delivery of any portion of the Cities' entitlements to under the Cities' Project Water Lease Agreements (Exhibits "3.m.1" through "3.m.7" of the Settlement Agreement), and prior to the delivery of any portion of the Cities' entitlements to "Colorado River water" under and as defined in the Cities' River Water Exchange Contracts (Exhibits "3.h.1" through "3.h.7" of the Settlement Agreement).

7. Except as otherwise provided in Paragraph 11 hereof, the Cities shall make payment for Project Water made available to the Cities pursuant to this Agreement in accordance with the terms and conditions of contracts to be entered into among the United States, the Contractor, and each of the Cities, the forms of which are attached as Exhibits "3.h.1" through "3.h.7" to the Settlement Agreement.

8. Except as provided in Paragraph 10 of this Agreement, nothing in this Agreement shall relieve the Subcontractor of its obligation to make the payments required in the Subcontract.

9. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract, the costs associated with the delivery of Project Water to the Cities pursuant to this Agreement shall be nonreimbursable, and such costs shall be excluded from the Contractor's repayment obligation.

10. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the Subcontractor's obligation to pay Agricultural Water service capital charges pursuant to Subarticle 5.2(a) of the Subcontract shall be reduced in each Year by an amount equal to $2.00 per acre-foot, or such amount as may be determined by the Contracting Officer based on payment capacity determinations provided for in the Repayment Contract, multiplied by the total amount of Project Water assigned by the Subcontractor

to the Cities pursuant to Paragraph 2 of this Agreement and scheduled for delivery by the Cities in such Year.

11. (a) Each City agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any operation, maintenance, and replacement costs associated with Project Water made available for delivery to the City pursuant to Paragraph 2 of this Agreement. Each City further agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any Agricultural Water service capital charges associated with any Project Water assigned by the Subcontractor to the City pursuant to Paragraph 2 of this Agreement. The liability of each City under this Paragraph 11(a) shall be its sole and separate obligation, and shall not be an obligation joint and several with any other City or Cities.

(b) In the event any City shall default and fail to indemnify Contractor or Subcontractor as required in Paragraph 11(a) hereof, then such City's entitlement to water under this Agreement shall be forfeit and such entitlement shall be redistributed pro rata to each of the other Cities which are parties to this Agreement. The redistribution of water shall be effected by means of a notice from Subcontractor and Contractor, if either has not been indemnified, to the defaulting City and to the other Cities which are parties to this Agreement, and such redistribution shall be effective on the thirty-fifth day after the notice is given. Within ten days of receiving the notice of re-distribution, each City other than the defaulting City shall pay to

Subcontractor or Contractor, as the case may be, its share of the amount the defaulting City shall have failed to pay, which share shall be in the proportion which the amount of water redistributed to such City bears to the total amount of water redistributed. In the event any City to which water is redistributed shall fail to make the payment hereby required to be made within the time herein prescribed, Subcontractor or Contractor, as the case may be, shall be free to redistribute such City's entitlement to redistributed water to any other City which makes such payment and which is also a party to this Agreement.

12. (a) Subcontractor's entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be 5.98 percent of the total supply of Agricultural Water available for delivery from the Project (subject to reduction by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer) unless, prior to the issuance by the Secretary of Notice of Completion of the Water Supply System, Subcontractor notifies the Contractor and the Contracting Officer that it wishes to reduce its entitlement to a lesser percentage of the total Agricultural Water supply. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement under Subarticle 4.13(a) of the Subcontract shall be as stated in the notice from the Subcontractor to the Contractor and the Contracting Officer.

(b) Notwithstanding the foregoing, the Contractor and the Contracting Officer may at any time prior to the issuance of

such Notice of Completion require the Subcontractor to specify its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract by notifying the Subcontractor that it must specify such entitlement within six months of the date that the Contractor and the Contracting Officer issue such notice. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be as specified by the Subcontractor in response to the notice issued by the Contractor and the Contracting Officer. In the event the Subcontractor fails to make such specification within the time required, Subcontractor's entitlement shall be fixed at 5.98 percent of the total Agricultural Water supply (subject to adjustment by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer).

(c) At the time the Subcontractor notifies the Contractor and the Contracting Officer of its percentage entitlement pursuant to subparagraph (a) of this Paragraph, or at the time the Subcontractor specifies its entitlement pursuant to subparagraph (b) of this Paragraph, Subcontractor may relinquish:

(i) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(a) of the Subcontract to be made available to the Subcontractor as a result of deductions made in other subcontractors' entitlements to Agricultural Water to reflect removal of eligible lands from agricultural use; and

(ii) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(b) of the Subcontract to be made available to the Subcontractor as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available;

Provided, however, that the Subcontractor shall relinquish at least 5,000 acre-feet, or the percentage of the projected Agricultural Water supply that most closely approximates 5,000 acre-feet, of any additional Agricultural Water entitlement to which the Subcontractor would be entitled under Subarticle 4.13(b) of the Subcontract as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available.

(d) Subject to the requirements and limitations of this Paragraph 12, Subcontractor may select its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract based upon its own evaluation of potential Agricultural Water supplies and its own requirements; Provided, however, that said Subcontractor's entitlement to Agricultural Water shall in no event exceed the lesser of 5.98 percent or the percentage entitlement determined by dividing the number of acres of eligible lands in the Subcontractor's service area by the total number of acres of eligible lands in the service areas of all subcontractors of Agricultural Water, as determined by the Contracting Officer.

13. Except as provided in this Agreement, all terms and conditions of the Subcontract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

Attest:

_____
Secretary

CENTRAL ARIZONA WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: George W. Barr
Title: President

Attest:

_____
Secretary

ROOSEVELT WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: Mark W. Dobson
Title: President

Attest:

_____
Clerk

Approved as to Form:

_____
City Attorney

CITY OF PHOENIX, a Municipal corporation, MARVIN A. ANDREWS, City Manager

By _____

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF SCOTTSDALE, an Arizona municipal corporation

By
Name: Herbert R. Drinkwater
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF GLENDALE, an Arizona municipal corporation

By
Name: George R. Renner
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF MESA, an Arizona municipal corporation

By
Name: C. K. Lawson
Title: City Manager

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF TEMPE, an Arizona municipal corporation

By
Name: Harry E. Mitchell
Title: Mayor

. . .

Attest:

Cleora Ellsworth
Clerk, Acting

Approved as to Form:

City Attorney

CITY OF CHANDLER, an Arizona municipal corporation

By
Name: Richard Dugan
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

TOWN OF GILBERT, an Arizona municipal corporation

By
Name: Steve M. Berman
Title:

. . .

APPENDIX A

The following are five examples of how Paragraphs 2 and 3 of the Assignment are intended to operate under varying water supply conditions and assuming varying entitlements to CAP Agricultural Water for Roosevelt Water Conservation District ("RWCD") under Subarticle 4.13(a) of RWCD's CAP Agricultural Subcontract.

EXAMPLE 1

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 1,000,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 5.98%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 59,800 AF.

(5.98% X 1,000,000 AF - 59,800 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 59,800 AF - 8,000 AF = 51,800 AF

5. RWCD's balance = 54,800 AF.

EXAMPLE 2

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 13,005 AF.

(2.89% X 450,000 AF = 13,005 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 13,005 AF - 8,000 AF = 5,005 AF.

5. RWCD's balance = 8,005 AF.

EXAMPLE 3

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,890 AF.

(2.89% X 100,000 AF = 2,890 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment = 0 (because RWCD's entitlement is sufficient to provide for delivery to the Cities of at least 3,000 AF in any year in which the total supply is 450,000 AF or more -- See Example 2).

EXAMPLE 4

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 10,980 AF.

(2.44% X 450,000 AF - 10,980 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 10,980 AF - 8,000 AF = 2,980 AF.

5. Cities' entitlement under Paragraph 3 of the Assignment =

(a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area:

Cities' entitlement = 3,000 AF - 2,980 AF = 20 AF

CITIES' TOTAL = 3,000 AF

(b) IF 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0

CITIES' TOTAL = 2,980 AF

EXAMPLE 5

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,440 AF.

(2.44% X 100,000 AF = 2,440 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment:

(a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement = 3,000 AF.

(b) RWCD's contribution = 2.44% X 3,000 AF = 73 AF.

(c) RWCD's net entitlement = 2,440 AF - 73 AF = 2,367 AF.

BUT

(d) If 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0.

EXHIBIT "C"

Total CAP Water Available to M&I: 443,067 A

SRPMIC Agreement Water Calculations

• Total Agreement Water Purchased:	22,000
• Losses Attributable to Agreement Water:	2,088
Total Agreement Water Credit:	19,912 B
Sum of SRPMIC Agreement Entitlements:	26,000 C
Total Water Available to M&I (A + B):	462,979
Total of M&I Entitlements (C + 638,823):	664,823
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	69.64%

CAP Water Available to M&I: 443,067 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	**Delivery Without Agreement (AF)**	**Delivery With Agreement* (AF)**
Avondale	4,099	0.64%	0.00%	0	**2,833**	**2,855**
Peoria	17,849	2.79%	0.00%	0	**12,338**	**12,430**
Glendale	14,083	2.20%	13.64%	3,545	**9,735**	**12,276**
Phoenix	113,882	17.83%	22.73%	5,909	**78,721**	**83,422**
Scottsdale	19,702	3.08%	0.45%	118	**13,619**	**13,803**
Chaparral City	6,978	1.09%	0.00%	0	**4,824**	**4,859**
Prescott	7,127	1.12%	0.00%	0	**4,927**	**4,963**
Payson	4,995	0.78%	0.00%	0	**3,453**	**3,478**
Tempe	4,315	0.68%	0.45%	118	**2,983**	**3,087**
Mesa	29,527	4.62%	12.55%	3,262	**20,411**	**22,834**
Apache Jct	6,000	0.94%	0.00%	0	**4,147**	**4,178**
Chandler	3,668	0.57%	19.45%	5,056	**2,536**	**6,075**
Gilbert	7,235	1.13%	30.74%	7,991	**5,001**	**10,604**
Casa Grande	8,884	1.39%	0.00%	0	**6,141**	**6,187**
Tucson	148,420	23.23%	0.00%	0	**102,595**	**103,359**
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where

X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

Total CAP Water Available to M&I: 218,338 A

SRPMIC Agreement Water Calculations

• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	3,496	
Total Agreement Water Credit:	18,504	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	236,842	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	35.62%	

CAP Water Available to M&I: 218,338 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	**Delivery Without Agreement (AF)**	**Delivery With Agreement* (AF)**
Avondale	4,099	0.64%	0.00%	0	**1,385**	**1,460**
Peoria	17,849	2.79%	0.00%	0	**6,031**	**6,359**
Glendale	14,083	2.20%	13.64%	3,545	**4,759**	**6,280**
Phoenix	113,882	17.83%	22.73%	5,909	**38,481**	**42,675**
Scottsdale	19,702	3.08%	0.45%	118	**6,657**	**7,061**
Chaparral City	6,978	1.09%	0.00%	0	**2,358**	**2,486**
Prescott	7,127	1.12%	0.00%	0	**2,408**	**2,539**
Payson	4,995	0.78%	0.00%	0	**1,688**	**1,779**
Tempe	4,315	0.68%	0.45%	118	**1,458**	**1,579**
Mesa	29,527	4.62%	12.55%	3,262	**9,977**	**11,681**
Apache Jct	6,000	0.94%	0.00%	0	**2,027**	**2,137**
Chandler	3,668	0.57%	19.45%	5,056	**1,239**	**3,108**
Gilbert	7,235	1.13%	30.74%	7,991	**2,445**	**5,424**
Casa Grande	8,884	1.39%	0.00%	0	**3,002**	**3,165**
Tucson	148,420	23.23%	0.00%	0	**50,151**	**52,874**
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where

X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

EXHIBIT "3.h.2"

River Water Exchange Contract
City of Glendale, Arizona

Exhibit "3.h.2"
RIVER WATER EXCHANGE CONTRACT
City of Glendale, Arizona

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Exhibit "3.h.2"
RIVER WATER EXCHANGE CONTRACT
City of Glendale, Arizona

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Exhibits

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE CITY OF GLENDALE, ARIZONA,
PROVIDING FOR WATER SERVICE

ARTICLE 1
Preamble

1. THIS CONTRACT, made as of the 12th day of February, 1988, in pursuance of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549, and 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), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, hereinafter referred to collectively as the "Federal Reclamation Laws," and the various authorities and responsibilities of the Secretary of the Interior in relation to Indians and Indian Tribes, as contained in Title 25 U.S.C. and 43 U.S.C. § 1457, among THE UNITED STATES OF AMERICA, acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as "CAWCD," a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the CITY OF GLENDALE, Arizona, hereinafter referred to as the "City," with its principal place of business at 5850 West Glendale Avenue, Glendale, Arizona;

WITNESSETH, THAT:

ARTICLE 2
Explanatory Recitals

2. 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., CAWCD 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 CAWCD, shall be a party to contracts that are in conformity with and subsidiary to the master contract; and

WHEREAS, the United States and CAWCD entered into Contract No. 14-06-W-245 dated December 15, 1972, which was amended on

December 1, 1988, hereinafter referred to as the "Repayment Contract," a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, whereby CAWCD agrees to repay to the United States the reimbursable costs of the Central Arizona Project allocated to CAWCD; and

WHEREAS, the City has entered into a water service subcontract with the United States and CAWCD for municipal and industrial water service from water supplies available from the Central Arizona Project, Contract No. 5-07-30-W0062; and

WHEREAS, the United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert, Arizona, and CAWCD have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members, to finally resolve pending litigation on water rights and damage claims, and to seek funding for implementation of the settlement; and

WHEREAS, the United States, acting through the Secretary of the Interior, has both a trust and fiduciary responsibility to make the Salt River Pima-Maricopa Indian reservation a permanent Tribal homeland for the Salt River Pima-Maricopa Indian Community; and

. . .

WHEREAS, as part of the water rights settlement with the Salt River Pima-Maricopa Indian Community, the United States is required to contract with the City for the delivery through Central Arizona Project facilities of not to exceed three thousand (3,000) acre-feet per year of Colorado River water which was not included in the determination of water supplies available to the Central Arizona Project, plus certain additional amounts of Central Arizona Project water to be made available each year by the Roosevelt Water Conservation District or the Secretary of the Interior from Central Arizona Project water supplies otherwise available for agricultural use;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 3
Definitions

3. For purposes of this Contract:

(a) "Agricultural water" shall mean water made available from the Central Arizona Project for the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than five acres.

(b) "CAWCD's service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such other counties as may hereafter become part of the District, . . .

exclusive of any Indian reservation land lying wholly or partly within said Counties.

(c) "Central Arizona Project" or "CAP" or "project" shall mean the project and works authorized by Section 301(a) of the Colorado River Basin Project Act and constructed by the United States pursuant to the provisions of said Act.

(d) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix, and the Town of Gilbert.

(e) "Colorado River water" shall mean that Colorado River mainstream water to be delivered to the City under this Contract which has a Colorado River priority pre-dating September 30, 1968.

(f) "Contracting Officer" shall mean the Secretary or his authorized designee acting on his behalf.

(g) "Distribution works" shall mean those facilities constructed or used for the purpose of distributing water to or within the City's service area after said water has been transported through the water supply system to the City's project turnout(s).

(h) "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, or as said statutes may be hereafter amended or revised.

. . .

(i) "Miscellaneous water" shall mean water made available from the Central Arizona Project, or by exchange for such water, for recreational and fish and wildlife purposes at other than project facilities, and which has a lesser priority of use than agricultural water.

(j) "Municipal and industrial water," hereinafter sometimes referred to as "M&I water," shall mean water made available from the Central Arizona Project other than agricultural water and miscellaneous water.

(k) "Notice of completion" shall mean the notice which the Contracting Officer issues to CAWCD to announce the substantial completion of the water supply system, or of those features of the project which include or comprise the water supply system, or of the entire project if constructed concurrently, thereby initiating payments therefor allocated to CAWCD.

(l) "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

(m) "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

(n) "Assignment Water" shall mean that water to be delivered to the City under this Contract which is made available to the City by the Roosevelt Water Conservation District ("RWCD") or the Secretary of the Interior pursuant to the Assignment, dated as of February 12, 1988 among the United States, CAWCD, RWCD,

. . .

and the Cities. A copy of the Assignment is attached hereto as Exhibit "B" and by this reference made a part hereof.

(o) "Project works" shall mean the principal works described in Section 301(a) of the Colorado River Basin Project Act, and appurtenances thereto, or as modified pursuant to the Repayment Contract, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

(p) "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from Colorado River water or Assignment Water as defined herein, but shall not include any water delivered through the project works for ground water recharge purposes.

(q) "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

(r) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, RWCD, the Roosevelt Irrigation District, the Cities, and CAWCD.

(s) "Subcontractor" shall mean any irrigation district, municipality, individual, or any other entity which enters into a water service subcontract with the United States and CAWCD in furtherance of the provisions of the Colorado River Basin Project Act.

(t) "Time of shortage" shall mean a calendar year for which the Secretary determines that a shortage exists pursuant to Section 301(b) of the Colorado River Basin Project Act, such that there is not sufficient water available for delivery from the Central Arizona Project in that year (after reduction in consideration of anticipated losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein) to meet fully the entitlements of Indian contractors and non-Indian municipal and industrial subcontractors of Central Arizona Project water supplies.

(u) "Transferred works" shall mean such features of the project or such facilities of the water supply system as to which OM&R responsibility is transferred from the United States to the Operating Agency.

(v) "Water supply system" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila, and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

(w) "Year" shall mean the period between January 1 through the next succeeding December 31.

ARTICLE 4
Term

4. This Contract shall become effective upon its execution by the parties hereto and its term shall be perpetual.

ARTICLE 5
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 3,000 acre-feet; and

(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 682 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 409 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery

point on the Colorado River, and shall be subject to reduction on account of losses by reason of evaporation and seepage occurring during the transportation of such water through the water supply system to the City's project delivery point. Said losses occurring on the City's Colorado River water supplies shall be determined by the Contracting Officer or the Operating Agency, but shall not exceed the City's pro rata share of losses as compared to losses due to evaporation and seepage occurring during transportation through the water supply system of all water supplies delivered during a year.

(d) The City's entitlement to Assignment Water under Subparagraphs 5(b)(ii) and 5(b)(iii) hereof, and its rights and obligations with respect to such Assignment Water, shall be subject to the terms and conditions of the Assignment attached hereto as Exhibit "B".

(e) The City's entitlement to Colorado River water and Assignment Water under this Contract shall be in addition to the City's entitlement to Central Arizona Project water for municipal and industrial use under the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0062).

(f) During such periods as it operates and maintains the Central Arizona Project, the United States shall deliver Colorado River water and Assignment Water to which the City is entitled under this Contract through the water supply system. Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the United States shall use all reasonable diligence to make available

to the City the quantity of Colorado River water and Assignment Water specified in the schedule submitted by the City in accordance with Article 6 hereof. After transfer of OM&R responsibility to the Operating Agency, the United States shall make deliveries of Colorado River water and Assignment Water to the Operating Agency which shall make subsequent delivery of such water to the City as provided herein.

(g) The obligation of the United States and the Operating Agency to deliver Colorado River water and Assignment Water to the City under this Contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, the contract between the United States and the State of Arizona dated February 9, 1944, the Opinion of the Supreme Court of the United States in the case of Arizona v. California et al., rendered June 3, 1963, 373 U.S. 546, and the Decree of that court in said case, entered March 9, 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as hereafter modified;

(ii) Executive A, Seventy-Eighth Congress, Second Session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and

Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty, all hereinafter referred to as the Mexican Water Treaty;

(iii) The express understanding and agreement by the City that this Contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this Contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and City shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam, Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to City hereunder; and

(iv) The right of the United States or the Operating Agency temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works what-

soever affecting, utilized or, in the opinion of the Secretary or the Operating Agency, necessary for delivery of water hereunder, it being understood that so far as feasible the United States or the Operating Agency will (i) do so during periods of low water demands and (ii) give reasonable notice in advance of such temporary discontinuance or reduction.

(h) Subject to the terms and conditions herein, the United States and the Operating Agency shall be obligated to deliver Colorado River water and Assignment Water to the City without regard as to whether or not the Salt River Pima-Maricopa Indian Community exercises its right to use any or all of the exchange water referred to in Paragraph 12 of the Settlement Agreement.

(i) Delivery and use of Colorado River Water and Assignment Water under this Contract is further conditioned on the following, and the City hereby agrees that:

(i) All uses of Colorado River water, Assignment Water and return flow shall be consistent with Arizona water law unless such law is inconsistent with the Congressional directives applicable to the Central Arizona Project.

(ii) The system or systems through which Colorado River water and Assignment Water for municipal and industrial (including ground water recharge) purposes is conveyed after delivery to the City shall consist of pipelines, canals, distribution systems, or other conduits provided and maintained with linings adequate in the Contracting Officer's judgment to prevent excessive conveyance losses.

(iii) The City shall not pump, or within its legal authority, permit others to pump ground water from within the exterior boundaries of the City's service area, which has been delineated on a map filed with the Contractor and approved by the Contractor and the Contracting Officer, for use outside of said service area unless such pumping is permitted under Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time, and the Contracting Officer, CAWCD, and the City shall agree, or shall have previously agreed, that a surplus of ground water exists and drainage is or was required; Provided, however, That such pumping may be approved by the Contracting Officer and CAWCD, and approval shall not be unreasonably withheld, if such pumping is in accord with the Colorado River Basin Project Act and upon submittal by the City of a written certification from the Arizona Department of Water Resources or its successor agency that the pumping and transportation of ground water is in accord with Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time.

(iv) The City shall not sell or otherwise dispose of or permit the sale or other disposition of Colorado River water and Assignment Water for use outside of Maricopa, Pinal, and Pima Counties; Provided, however, That this does not prohibit exchanges of Colorado River water and Assignment Water covered by separate agreements; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article

. . .

6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0062).

(j) (i) Colorado River water and Assignment Water scheduled for delivery in any year under this contract may be used by the City or resold or exchanged by the City pursuant to appropriate agreements approved by the Contracting Officer and CAWCD. If said water is resold or exchanged by the Contractor for an amount in excess of that which the City is obligated to pay under this Contract, the excess amount shall be paid forthwith by the City to CAWCD for application against the CAWCD's repayment obligation to the United States; Provided, however, That the Contractor shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to OM&R costs.

(ii) Colorado River water and Assignment Water scheduled for delivery in any year under this Contract that cannot be used, resold, or exchanged by the City may be made available by the Contracting Officer or the Operating Agency to other users. If such water is sold to or exchanged with other users, the City shall be relieved of its payments hereunder only to the extent of the amount paid to the Contracting Officer and the Operating Agency by such other users, but not to exceed the amount the City is obligated to pay under this Contract for said water.

(iii) In the event the City, the Contracting Officer, or the Operating Agency is unable to sell any portion of the Colorado River water or Assignment Water scheduled for delivery

by the City but not required by the City in any year, the City shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water as determined by the Contracting Officer or the Operating Agency.

(k) The City shall have the right to use Colorado River water and Assignment Water received under this Contract for any purpose consistent with Arizona law, including ground water recharge.

ARTICLE 6
Procedure for Ordering Water

6. At least six months prior to the delivery of Colorado River water and Assignment Water to the City under this Contract, the Contracting Officer or the Operating Agency shall issue a written notice of availability of such water to the City. The City will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer and the Operating Agency showing the quantities of (i) Colorado River water and (ii) Assignment Water requested for delivery. The City shall submit a schedule which requests the delivery of all Assignment Water available to it. If the first notice of availability of water is issued to the City by the Contracting Officer or the Operating Agency prior to June 1 of any year, the first schedule for the balance of said year shall be submitted to the Contracting Officer and the Operating Agency within 30 days after the City's receipt of such notice. If such notice is issued after June 1 of any year, the first schedule shall be submitted to the Contracting

Officer and the Operating Agency within 30 days after the City's receipt of such notice and shall cover the balance of such year and the next succeeding year. Thereafter, the amounts, times, and rates of delivery of water to the City during any year shall be in accordance with a water delivery schedule for that year, such schedule to be determined in the following manner:

(a) On or before June 1 of each year, the Contracting Officer shall announce (i) the amount of Colorado River water and (ii) the amount of Assignment Water available for delivery during the following year in a written notice to the Operating Agency and the City.

(b) On or before October 1 of each year, the City shall submit in writing to the Operating Agency and the Contracting Officer a water delivery schedule indicating the amounts of (i) Colorado River water and (ii) Assignment Water desired by the City during each month of the following year along with a preliminary schedule of water desired for the succeeding 2 years. The City shall schedule for delivery each year all Assignment Water available to it for delivery during that year.

(c) Upon receipt of such schedule, the Contracting Officer and the Operating Agency shall review it and, after consultation with the City, shall make only such modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to the City are consistent with the delivery capability of the project, considering, among other things, the availability of water and the delivery schedules of all subcon-

tractors of Central Arizona Project water service; Provided, That this provision shall not be construed to reduce annual deliveries to the City.

(d) On or before November 15 of each year, the Contracting Officer or the Operating Agency shall determine and furnish to the City the water delivery schedule for the next succeeding year which shall show the amounts of (i) Colorado River water and (ii) Assignment Water to be delivered to the City during each month of that year.

(e) The monthly water delivery schedules may be amended by the Contracting Officer or the Operating Agency upon the City's written request. Proposed amendments shall be submitted by the City within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer or the Operating Agency in like manner as the schedule itself.

(f) In no event shall the Contracting Officer or the Operating Agency be required to deliver in any one month (i) an amount of Colorado River water greater than eleven percent (11%) of the City's maximum annual entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment Water greater than eleven percent (11%) of the City's maximum annual entitlement to Assignment Water under Subarticle 5(b)(ii) or 5(b)(iii) of this Contract; Provided, however, That the Contracting Officer or the Operating Agency may deliver a greater percentage of such water in any month if such increased delivery is

compatible with the overall delivery of Central Arizona Project water to CAP subcontractors as determined by the Contracting Officer and the Operating Agency, and if the City agrees to accept such increased deliveries.

ARTICLE 7
Points of Delivery--Measurement and Responsibility for Distribution of Water

7. (a) All water to be furnished to the City pursuant to this Contract shall be delivered at turnouts to be constructed by the United States at such point(s) on the water supply system as may be agreed upon in writing by the Contracting Officer and CAWCD, after consultation with the City.

(b) Unless the United States and the City agree by contract to the contrary, the City shall construct and install, at its sole cost and expense, connection facilities required to take and convey such water from the turnouts to the City's service area. The City shall furnish, for approval of the Contracting Officer, drawings showing the construction to be performed by the Contractor within the water supply system right-of-way six months before starting said construction. The facilities may be installed, operated, and maintained on the water supply system right-of-way subject to such reasonable restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by the Contracting Officer.

(c) All water delivered to the City pursuant to this Contract shall be measured with equipment furnished and installed by the United States and operated and maintained by the

United States or by the Operating Agency. Upon the request of the City or the Operating Agency, the accuracy of such measurements shall be investigated by the Contracting Officer or by the Operating Agency and the City, and any errors which may be mutually determined to have occurred therein shall be adjusted; Provided, That in the event the parties cannot agree on the required adjustment, the Contracting Officer's determination shall be conclusive.

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

(e) In addition to the right of the United States under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce the amount of water to be delivered through the Central Arizona Project, the United States or the Operating Agency may, after consultation with the City, temporarily discontinue or reduce the quantity of water to be furnished to the City as herein provided for the purpose of investigation, inspection, maintenance, repair, or replacement of any CAP facilities or

any part thereof necessary for the furnishing of water to the City under this Contract, but so far as feasible the United States or the Operating Agency shall coordinate any such discontinuance or reduction with the City and shall give the City due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Neither the United States, its officers agents, and employees, nor the Operating Agency, its officers, agents, and employees, shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to the City of less water than what has been paid for in advance, the City shall be entitled to be reimbursed for the appropriate proportion of advance payments of OM&R charges prior to the date of the City's next payment of OM&R charges or the City may be given credit toward the next payment of OM&R charges if the City should so desire.

ARTICLE 8
Priority in Case of Shortage

8. (a) Subject to the provisions of Section 304(e) of the Colorado River Basin Project Act, in the event of a shortage of the water supplies available to the Central Arizona Project, as determined by the Contracting Officer after consultation with CAWCD, Assignment Water furnished to the City under this Contract shall be subject to reduction in the same manner and to the same

. . .

extent as agricultural water under Central Arizona Project agricultural water service subcontracts.

(b) In a time of shortage, the City's entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract shall be determined by the following formula:

City's entitlement to Colorado River water in a time of shortage = $[(X+Y) \cdot (A+B)/(C+D)] - [(X/D) \cdot A]$*

Where:

X = the City's entitlement to Central Arizona Project water for M&I water use under Article 4.12 of Contract No. 5-07-30-W0062, as the same may be amended or supplemented from time to time;

Y = 3,545 acre-feet;

A = the total amount of water available from the Central Arizona Project for non-Indian M&I water use (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein), as determined by the Contracting Officer in accordance with the method outlined in the Record of Decision of the Secretary published in the Federal Register on March 24, 1983;

B = the total amount of Colorado River water available to the Cities pursuant to this Contract with the City of Glendale and like contracts with the other Cities (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system);

C = 26,000 acre-feet.

D = the sum of all non-Indian municipal and industrial subcontractors' entitlements to Central Arizona Project water for M&I water use under Article 4.12 of all non-Indian CAP municipal and industrial sub-

contracts, as the same may be amended or supplemented from time to time;

* It is the intent of the parties that this calculation be performed in a manner which is consistent with the method of calculation exemplified in Tables 1 and 2 attached hereto as Exhibit "C".

(c) Notwithstanding the provisions of Subarticle 5(c) of this Contract, the City's entitlement to Colorado River water, as determined in accordance with the formula set forth in Subarticle 8(b) hereof, shall be made available to the City at the City's project turnout(s).

(d) In a time of shortage, any Colorado River water available from the 22,000 acre-feet to be obtained by the United States pursuant to Subarticle 5(a) hereof in excess of that necessary to satisfy the entitlement of the City under Subarticle 8(b) of this Contract and the entitlements of the other Cities under Subarticle 8(b) of like contracts with such Cities shall be made available by the Secretary for delivery to non-Indian CAP municipal and industrial subcontractors other than the Cities pursuant to the Central Arizona Project M&I water service subcontracts with such subcontractors, pro rata in proportion to each such subcontractor's entitlement to Central Arizona Project water for M&I use under such subcontractor's Central Arizona Project M&I water service subcontract. The manner in which this Subarticle 8(d) is intended to operate is illustrated by Tables 1 and 2 attached hereto as Exhibit "C".

. . .

ARTICLE 9
Payments

9. (a) Subject to the provisions of Article 11 hereof, the City shall pay in advance for CAP OM&R costs estimated to be incurred by the United States or the Operating Agency in delivering Colorado River water and Assignment Water to the City pursuant to this Contract. At least 6 months prior to the first delivery of such water, or as soon thereafter as is practicable, the Contracting Officer or the Operating Agency shall furnish the City with an estimate of the City's share of OM&R costs to the end of the initial year of water delivery and an estimate of such costs for the following year. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer or the Operating Agency, but prior to the delivery of water, the City shall advance to the Contracting Officer or the Operating Agency its share of such estimated costs to the end of the initial month of water delivery and without further notice or demand shall on or before the first day of each succeeding month of the initial year of water delivery and the following year advance to the Contracting Officer or the Operating Agency in equal monthly installments the City's share of such estimated costs. Advances of monthly payments for each subsequent year shall be made by the City to the Contracting Officer or the Operating Agency on the basis of annual estimates to be furnished by the Contracting Officer or the Operating Agency on or before June 1 preceding each said subsequent year, and the advances of payments for said estimated costs shall be due and

payable in equal monthly payments on or before the first day of each month of the subsequent year. Differences between actual OM&R costs and estimated OM&R costs shall be adjusted in the next succeeding annual estimates; Provided, however, That if in the opinion of the Contracting Officer or the Operating Agency the amount of any annual OM&R estimate is likely to be insufficient to cover the above-mentioned costs during such period, the Contracting Officer or the Operating Agency may increase the annual estimate of the City's OM&R costs by written notice thereof to the City, and the City shall forthwith increase its remaining monthly payments in such year to the Contracting Officer or the Operating Agency by the amount necessary to cover the estimated insufficiency. All estimates of OM&R costs shall be accompanied by data and computations relied on by the Contracting Officer or the Operating Agency in determining the amounts of the estimated OM&R costs and shall be subject to joint review by the City and the Contracting Officer or the Operating Agency.

(b) Other than as provided for in Exhibit "B" hereto with respect to Assignment Water, the City shall not be required to pay any water service capital charge(s) with respect to Colorado River water or Assignment Water to which the City is entitled under this Contract.

(c) Payment of all OM&R charges becoming due hereunder prior to or on the dates stipulated in Subarticle 9(a) hereof is a condition precedent to receiving water under this Contract.

(d) All payments to be made to the Operating Agency or the United States under Subarticle 9(a) hereof shall be made by the City as such payments fall due from revenues legally available to the City for such payment from the sale of water to its water users and from any and all other sources which might be legally available; Provided, That no portion of the general taxing authority of the City, nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of this Contract, nor shall such sources be liable for any payments, contributions, or other costs pursuant to this Contract, or to satisfy any obligation hereunder unless duly and lawfully allocated and budgeted for such purpose by the City for the applicable budget year; and Provided, further, That no portion of this Contract shall ever be construed to create an obligation superior in lien to or on a parity with the Cities' revenue bonds now or hereafter issued. The City shall levy and impose such necessary water service charges and rates and use all the authority and resources available to it to collect all such necessary water service charges and rates in order that the City may meet its obligations hereunder and make in full all payments required under this Contract on or before the date such payments become due.

ARTICLE 10
Loss of Entitlement

10. The City shall have no right to delivery of Colorado River water or Assignment Water under this Contract during any period in which the City may be in arrears in the payment of

any charges due the United States or the Operating Agency. The Contracting Officer or the Operating Agency may sell to another entity any water determined to be available under the City's entitlement for which payment is in arrears; Provided, however, That, except as provided to the contrary in Exhibit "B" hereto, the City may regain the right to use any unsold portion of the water determined to be available under the City's original entitlement upon (i) payment of all delinquent charges plus any difference between the contractual obligation and the price received in the sale of the water by the Contracting Officer or Operating Agency and (ii) payment of charges for the current period.

ARTICLE 11
Refusal to Accept Delivery

11. In the event the City fails or refuses in any year to accept delivery of the quantity of water available for delivery to and required to be scheduled by it pursuant to this Contract, or in the event the City in any year fails to submit a schedule for delivery as provided in Article 6 hereof, said failure or refusal shall not relieve the City of its obligation to make the payments required in this Contract.

ARTICLE 12
Charges for Delinquent Payments

12. (a) The City shall be subject to interest, administrative, and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the City shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent,

the City shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the City shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the City shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

ARTICLE 13
Secretarial Control of Return Flow

13. (a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of CAWCD's service area as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for CAP use return flow which originates or results from water contracted

for from the Central Arizona Project within the boundaries of CAWCD's service area if, in his judgment, such return flow is not being put to a beneficial use. The City may recapture and reuse or sell its return flow; Provided, however, That such return flow may not be sold for use outside Maricopa, Pinal, and Pima Counties; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0062). The City shall, at least 60 days in advance of any proposed sale of such water, furnish the following information in writing to the Contracting Officer and CAWCD:

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

(ii) The location and proposed use of the return flow.

(iii) The price to be charged for the return flow.

(b) The price charged for the return flow may cover the cost incurred by the City for Colorado River water and Assignment Water plus the cost required to make the return flow usable. If the price received for the return flow is greater than the costs incurred by the City, as described above, the excess amount shall be forthwith paid by the City to the CAWCD for application against CAWCD's repayment obligation to the United States. Costs required to make return flow usable shall include but not be limited to capital costs and OM&R costs including transportation,

treatment, and distribution, and the portion thereof which may be retained by the City shall be subject to the advance approval of CAWCD and the Contracting Officer.

(c) Any return flow captured by the United States and determined by the Contracting Officer and CAWCD to be suitable and available for use by the City may be delivered by the United States or Operating Agency to the City as a part of the water supply for which the City has subcontracted pursuant to Contract No. 5-07-30-W0062, and such water shall be accounted and paid for pursuant to the provisions thereof.

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

ARTICLE 14
Water and Air Pollution Control

14. The City, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

ARTICLE 15
Quality of Water

15. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Con-

tracting Officer. Neither the United States nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. The City waives its right to make a claim against the United States, the Operating Agency, or any subcontractor because of changes in water quality caused by the commingling of water to be delivered under this Contract with other water.

ARTICLE 16
Equal Opportunity

16. During the performance of this Contract, the City agrees as follows:

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

. . .

(b) The City will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The City will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising said labor union or workers' representative of the City's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The City will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The City will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the City's noncompliance with the nondiscrimination clauses of this Contract or with any of

such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the City may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The City will include the provisions of Subarticles 16(a) through 16(g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The City will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the City becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 17
Compliance with Civil Rights Laws and Regulations

17. (a) The City shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other

applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the City agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

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ARTICLE 18
Notices

18. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the City and CAWCD, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States and CAWCD, when mailed, postage prepaid, or delivered to the Manager of the City, 5850 West Glendale Avenue, Glendale, Arizona 85301, on behalf of the City and the United States, when mailed, postage prepaid, or delivered to the General Manager, Central Arizona Water Conservation District, 23636 North Seventh Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

ARTICLE 19
Assignment Limited--Successors and Assigns Obligated

19. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid unless and until approved in writing by the Contracting Officer and CAWCD.

ARTICLE 20
Officials Not to Benefit

20. No Member of or Delegate to Congress, Resident Commissioner, or official of the City shall benefit from this

. . .

Contract other than as a water user or landowner in the same manner as other water users or landowners.

ARTICLE 21
Transfer of OM&R Responsibility to CAWCD; Project Repayment

21. (a) At or prior to the date that the United States transfers OM&R responsibility for project works associated with delivery of water to the Cities to CAWCD as the Operating Agency, the United States shall secure the agreement of CAWCD to perform the United States' obligations under this Contract to deliver water under this Contract through the transferred works.

(b) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract and any amendment or revision thereof, the costs associated with the delivery of water to the City under this Contract shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

ARTICLE 22
Repayment Contract Controlling

22. Pursuant to the Repayment Contract, the United States has agreed to construct and, in the absence of an approved Operating Agency, to operate and maintain the works of the Central Arizona Project and to deliver Central Arizona Project water to the various subcontractors within CAWCD's service area; and CAWCD has obligated itself for the payment of various costs, expenses, and other amounts allocated to CAWCD pursuant to Article 9 of the Repayment Contract. The City expressly approves and agrees to all

the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this Contract No. 9-07-30-W0236 the day and year first above-written.

THE UNITED STATES OF AMERICA

By _____

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Attest: _____ By _____
Secretary President

CITY OF GLENDALE, ARIZONA

Attest: _____ By _____
Clerk Mayor

Approved as to Form: _____
City Attorney

Exhibit "A"

CAP Master Repayment Contract

DUPLICATE-ORIGINAL

Contract No. 14-06-W-245
Amendment No. 1
B.C. Draft 11/28/88

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND THE CENTRL ARIZONA WATER CONSERVATION DISTRICT FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE CENTRAL ARIZONA PROJECT

1. PARTIES

The parties to this contract, executed as of this first day of December, 1988, are the United States of America, acting through the Department of the Interior, and the Central Arizona Water Conservation District, a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona.

2. AUTHORITIES

This contract is made pursuant to the:

2.1 Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto.

2.2 Boulder Canyon Project Act, approved December 21, 1928, 45 Stat. 1057, a supplement to the Federal Reclamation Laws.

2.3 Reclamation Project Act of 1939, approved August 4, 1939, 53 Stat. 1187, as amended.

2.4 Colorado River Basin Project Act, approved September 30, 1968, 82 Stat. 885, as amended, a supplement to the Federal Reclamation Laws.

2.5 Arizona Revised Statutes, Section 48-3701 et seq.

3. RECITALS

3.1 The Colorado River Basin Project Act provides, among other things, that for the purposes of furnishing irrigation water and municipal and industrial water supplies to water-deficient areas in 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, consisting of the principal works hereinafter described in Article 6.3.

3.2 Pursuant to the provisions of Arizona Revised Statutes, Section 48-3701 et seq., the Central Arizona Water Conservation District 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, Section 48-3701 et seq.

3.3 On December 15, 1972, the United States and the Contractor entered into a contract entitled "Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), whereby, among other things, the United States agreed to construct the Central Arizona Project and the Contractor agreed to repay the costs of the project properly allocable to the Contractor.

3.4 Subarticle 9.3(b) of said contract provides that the Contractor's repayment obligation shall not exceed $1.2 billion.

3.5 Subarticle 9.3(b) of said contract also provides that if the

Contractor's repayment obligation will exceed $1.2 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation.

3.6 Both parties acknowledge that the Contractor's repayment obligation will exceed $1.2 billion, and have agreed to increase the Contractor's repayment ceiling to a level sufficient to facilitate completion of the project.

4. ARTICLES OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is agreed by and between the parties hereto as follows:

5. DEFINITIONS

When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the terms:

5.1 "Federal Reclamation Laws" or "Reclamation Laws" shall mean the Act of June 17, 1902, 32 Stat. 388, and all acts amendatory thereof or supplementary thereto.

5.2 "Basin Project Act" shall mean the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, as amended, which is a supplement to the Federal Reclamation Laws.

5.3 "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

5.4 "Contracting Officer" shall mean the Secretary or his authorized designee acting in his behalf.

5.5 "Contractor" shall mean the Central Arizona Water

Conservation District, organized pursuant to Arizona Revised Statutes, Section 48-3701 et seq.

5.6 "Service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties of Arizona and such other counties as may hereafter become part of the District, exclusive of any Indian reservation land lying wholly or partly within said Counties.

5.7 "Subcontractor" shall mean any irrigation district, municipality, individual, or any entity which enters into a water service subcontract with the United States and the Contractor in furtherance of the provisions of the Basin Project Act.

5.8 "Central Arizona Project" or "project" shall mean the project and works authorized by Section 301(a) of the Basin Project Act and constructed by the United States pursuant to the provisions of said Act and this contract.

5.9 "Project works" shall mean the principal works described in Section 301(a) of the Basin Project Act, and appurtenances thereto, or as modified pursuant to Article 6.4 hereof, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

5.10 "Water supply system" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt Gila and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

5.11 "Distribution works" shall mean those facilities constructed or financed by the United States under the authorization in Section 309(b) of the Basin Project Act for the primary purpose of

distributing the project water supply within the service area after said project water supply has been transported or delivered through the water supply system.

5.12 "Agricultural water" or "irrigation water" shall mean project water used primarily in the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than 5 acres.

5.13 "Miscellaneous water" shall mean water delivered from the project, or by exchange for project water, for recreational and fish and wildlife purposes at other than project facilities and shall have a lesser priority of use than agricultural water.

5.14 "Municipal and industrial water," herein referred to as "M&I water," shall mean project water other than agricultural or miscellaneous water delivered by means of the project works.

5.15 "Lands not having a recent irrigation history" shall mean, except where otherwise determined by the Secretary for efficiency of subcontractor's operation, lands which the Secretary determines were not irrigated during the period September 30, 1958, to September 30, 1968.

5.16 "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

5.17 "Exchange water" shall mean Colorado River water made available in exchange for or in replacement of existing supplies from surface sources other than the mainstream of the Colorado River.

5.18 "Transferred works" shall mean such facilities of the water supply system or of other construction stages as to which OM&R

responsibility is transferred from the United States to the Operating Agency.

5.19 "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

5.20 "Transfer notice" shall mean a written notice or notices, numbered consecutively, which the Contracting Officer transmits to the Operating Agency and which shall designate:

(a) the transferred works;

(b) items of equipment and supplies transferred to the Operating Agency; and

(c) the date upon which such transfer will be effected.

5.21 "Gila River system waters" shall mean waters of the Gila River and tributaries thereof east of the Yuma-Maricopa County line.

5.22 "Notice of completion" shall mean the notice which the Contracting Officer issues to Contractor to announce the substantial completion of a construction stage. Each such notice of completion shall include the estimated amount of the repayment obligation for the construction stage to which the notice pertains, the date of initiation of repayment for the construction stage and indicate the amount and due date for the first payment for the construction stage.

5.23 "Development Fund" shall mean the separate fund, known as the Lower Colorado River Basin Development Fund, established in the Treasury of the United States pursuant to Section 403(a) of the Basin Project Act.

5.24 "Year" shall mean the period January 1 through the next

succeeding December 31.

5.25 "Contractor's Construction Cost Repayment Obligation," hereinafter referred to as "repayment obligation," shall mean the total amount of all construction costs including related construction claims and interest thereon, OM&R costs during construction, and interest on costs allocated to the M&I water and power functions during construction, of the Central Arizona Project, incurred therefor and as determined by the United States and further described in Article 6.2 hereof, excluding reimbursable costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors, and which is determined by the Secretary, after consultation with the Contractor, to be allocable to and repayable by the Contractor in accordance with the provisions of the Basin Project Act and this contract.

5.26 "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from water contracted for from the Central Arizona Project, but shall not include any water delivered through the project works for ground water recharge purposes.

5.27 "Project water" shall mean (a) all water allocated by the Secretary for project purposes by Federal Register notice dated March 24, 1983, and any subsequent reallocation by the Secretary as contemplated in paragraph 6 of said Federal Register notice, which water is available pursuant to contracts with the Secretary from: (1) the Colorado River; (2) Central Arizona Project dams and reservoirs; and (3) return flows captured by the Secretary for project use; (b) any water

delivered to entities in Arizona, through the project works, as a replacement supply for Cliff Dam; (c) water delivered to water users in Arizona, through the project works, in exchange for water delivered to users in New Mexico from or by means of the project works; and (d) any additional water not included in (a) above, that is required to be delivered by the Secretary through the project, pursuant to the Ak-Chin Water Rights Settlement Act of 1978 (Public Law 95-328), as amended on October 19, 1984 (Public Law 98-530); the Southern Arizona Water Rights Settlement Act of October 12, 1982 (Title III of Public Law 97-293); and, subject to the execution of a settlement agreement by the Contractor providing for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community and to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (Public Law 100-512), up to 22,000 acre-feet annually of Colorado River water to be delivered through the project works in accordance with said settlement agreement and legislation.

5.28 "Indian lands" shall mean the lands within any Indian reservation for which an allocation of project water has or will be made by the Secretary for delivery through project works.

5.29 "Navajo Project" shall mean the interests of the United States in the Navajo Generating Station and the Transmission System, or any replacement thereof, as authorized by Section 303 of the Basin Project Act and as described in contracts entered into pursuant to that Act.

5.30 "Construction stage" shall mean any one of the following: (1) the water supply system; (2) New Waddell and Modified Roosevelt Dams; (3) replacement features or programs for Cliff Dam; (4) Tucson terminal storage; (5) Hooker Dam or suitable alternative; and (6) Buttes Dam.

5.31 "Plan 6" shall mean Plan 6 for the Regulatory Storage Division of the Central Arizona Project as approved by Record of Decision of the Secretary dated April 3, 1984 as amended and supplemented by Records of Decision of the Secretary dated May 20, 1986 (Supplement One) and June 17, 1988 (Supplement Two).

5.32 "Allocable cost" shall mean (a) with respect to the project, the total project cost less (1) the cost of non-Indian distribution works, (2) the cost of the safety of dams component of Plan 6, (3) the cost of Indian distribution systems, (4) the cost of the Colorado River Division and the New Mexico fish hatchery, (5) the cost of cultural resources studies, (6) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (7) the costs of Charleston Dam and San Pedro Aqueduct, (8) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (9) such other costs as determined appropriate by the Contracting Officer; and (b) with respect to each construction stage, the total cost of such stage less that portion of the following costs associated with such stage: (1) the cost of the safety of dams component of Plan 6, (2) the cost of cultural resources studies, (3) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (4) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (5) such other costs as determined appropriate by the Contracting Officer.

5.33 "OM&R Transfer Contract" shall mean the August 5, 1987, contract entitled "Contract Between the United States of America and the

Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities" (Contract No. 7-07-30-W0167), and any amendment or revision thereof.

5.34 "Overall repayment period" shall mean the period of time beginning with initiation of repayment of the first construction stage and ending with final payment of the last construction stage.

5.35 "Plan 6 Funding Agreement" shall mean the April 15, 1986, agreement entitled "Agreement Among the United States, the Central Arizona Water Conservation District, the Flood Control District of Maricopa County, the Salt River Agricultural Improvement and Power District and Salt River Valley Water Users' Association, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, the State of Arizona, and the City of Tucson for Funding of Plan Six Facilities of the Central Arizona Project, Arizona, and for other Purposes," as it may be supplemented or amended.

5.36 "Permanent service" shall mean that water supply service commencing in the year following substantial completion of the water supply system and continuing in perpetuity.

5.37 "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be amended or revised.

5.38 "Project power" shall mean the United States' entitlement to capacity and energy from the Navajo Project.

6. PROJECT CONSTRUCTION

6.1 Agreement of the United States. Subject to the terms and

conditions of this contract and within the limits of the funds made available therefor by Congress, the United States will expend toward the construction of the project, exclusive of interest costs during construction, $832,180,000 based on 1967 cost estimates, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein, or so much of such amount, as in the opinion of the Secretary, is necessary to construct said project, whichever amount is the lesser. The aforementioned amount includes the United States' costs of participation in the Navajo Project.

6.2 Costs of Project.

(a) The estimated construction cost of $832,180,000 for the project, based upon 1967 prices, has been determined as follows:

	$ 1,000's
Main System	
Granite Reef Division	407,740
Orme Division	42,340
Salt-Gila Division	47,170
Tucson Aqueduct (Colorado River source)	46,300
Buttes Dam	35,240
Navajo Project	106,000
Subtotal	684,790
Other Separate Features	
Hooker Dam or suitable alternative	31,730
Charleston Dam and San Pedro Aqueduct (San Pedro River source)	36,420
Subtotal	68,150
Miscellaneous Features	
*Gila River Division	5,250
Indian Distribution System	19,970
Colorado River Division	42,450
Drainage System	11,570
Subtotal	79,240
Total Project	$832,180

*Note: Fish hatchery costs, some of which may be located on the Colorado River.

Provided, however, That (i) the adjustment provisions of Article 6.1 apply

to the total construction costs of the project and not to the costs of the individual line items set out in this Subarticle 6.2(a), and (ii) in accordance with provisions of Article 6.4 herein, the references to the individual line items set out in this Subarticle 6.2(a) are not to be deemed a determination that each of the features referred to in the individual line items will be constructed or that costs will be incurred for each of said individual line items based upon a percentage which the estimated costs for each individual line item bears to the project's total estimated construction costs.

(b) The Central Arizona Project costs incurred by the United States which are to be repaid by Contractor shall include the share allocated to the Contractor of (i) construction costs of the project, (ii) all expenses of whatsoever kind or nature heretofore or hereafter incurred by the United States in connection with, growing out of, or resulting from the construction, and (iii) the OM&R during construction of project works. The aforementioned share of allocated costs shall also include, but shall not be limited to, interest during construction on costs allocated to the M&I water and power functions, the cost of labor, materials, equipment, engineering, legal services, surveys, investigations, property, superintendence, administration, overhead, general expenses, special services, damages of all kinds and character, inspection, repair, and protection of project works and water supply, and the costs of all lands, interests in lands, and rights-of-way acquired by the United States for the project, all as determined by the Secretary.

6.3 Principal Works of the Project. The works and facilities to be constructed under this contract shall consist of the following principal

works:

(a) A system of main conduits and canals, including the Havasu Pumping Plant and a main canal and pumping plants (Granite Reef Aqueduct and pumping plants), for diverting and carrying water from Lake Havasu to the confluence of the Salt and Verde Rivers, which system will have a capacity of 3,000 cubic feet per second;

(b) Salt-Gila Aqueduct and pumping plant;

(c) Tucson Aqueduct and pumping plants;

(d) New Waddell and Modified Roosevelt Dams;

(e) replacement features or programs for Cliff Dam;

(f) Tucson Terminal Storage (if approved by the Secretary);

(g) Buttes Dam and Reservoir;

(h) Hooker Dam and Reservoir or suitable alternative which shall be constructed in such manner as to give effect to the provisions of Section 304(f) of the Basin Project Act;

(i) Charleston Dam and Reservoir and the San Pedro Aqueduct;

(j) related canals, regulating facilities, and electric transmission facilities required for the operation of said principal works;

(k) related water distribution and drainage works; and

(l) appurtenant works.

No works or facilities for the treatment of water are included in the project works to be constructed by the United States. Nothing contained herein shall be construed to indicate the order in which the aforedescribed works will be constructed.

6.4 Changes in Project Works. Should the Secretary, either before or during construction, determine it to be in the best interests of

the project, he may, upon the completion of the studies currently being made or to be made, including land classifications, hydrological, engineering, geological, sedimentation, water supply, and repayment ability, and after consultation with the Contractor, change the location, size, or capacity of any of the project works, or may eliminate works, or add works to those described above, and the Secretary's decision on such changes, eliminations, and additions shall be conclusive.

6.5 Construction Conditions. The United States shall be under no obligation to commence or, having commenced, to continue construction of project works until transfer from the State of Arizona of such State-owned lands or interests therein, in a form acceptable to the Attorney General of the United States, as the Secretary determines is necessary in the construction, operation, or maintenance of the project.

6.6 Annual Work Program. During construction of the project works the Contracting Officer will consult with the Contractor and/or with any subcontractor through or within whose service area project works are to be constructed to achieve maximum coordination between such construction program and the annual programs of any affected subcontractor. Within 30 days following the enactment by Congress and Presidential approval of annual or supplementary appropriation acts and the allotment of funds thereunder for continued construction of the project, the United States will furnish the Contractor with a notice and statement showing the proposed construction program for the balance of the current fiscal year and for the following fiscal year or years. If so requested in writing by the Contractor within 30 days of its receipt of such notice, the Secretary will consult with the Contractor and/or the affected subcontractor with respect

to the proposed program. The action of the Contracting Officer concerning the program after such consultation shall be final.

6.7 Inability of the United States to Complete Project on Basis of Cost Estimates. If construction of the project works shall have been commenced but, prior to completion, the Secretary determines that the cost of constructing the project will exceed the maximum amount to be expended therefor by the United States as provided for in Article 6.1 hereof, the Secretary may after consultation with the Contractor terminate construction and declare the obligations of the United States hereunder with regard to completion of construction of the project to have been fulfilled. If appropriations for the continuance and/or completion of construction in amounts sufficient in the opinion of the Secretary to complete said construction are authorized by Congress and are available, the Secretary shall consult with the Contractor and shall make continuation of construction contingent upon the execution of an amendatory contract with the Contractor wherein the Contractor's maximum repayment obligation is increased so as to cover the increased reimbursable costs as determined by the Secretary; Provided, however, That the Contractor shall not utilize any part of the completed or unfinished project facilities in the absence of written agreement with the Secretary for reimbursement therefor.

7. PROJECT OPERATION, MAINTENANCE, AND REPLACEMENT

7.1 Operation and Maintenance and Water Deliveries by the United States Prior to Completion of Construction. Except as provided in the OM&R Transfer Contract, prior to completion of project works by the United States, as determined and announced to the Contractor in writing by the Secretary, the United States will operate and maintain said project

facilities. The cost of said OM&R allocated to the Contractor shall be included in the Contractor's repayment obligation; Provided, however, That said OM&R cost shall not be included with the project cost ceiling set out in Article 6.1 hereof. During the aforesaid period, project water, if available, may be disposed of by the Secretary at charges which the Secretary determines to be appropriate; Provided, however, That to the extent deemed feasible by the Secretary, preference will be given to subcontractors and Indian lands. Payment for water shall be made in advance by the water user. The places of measurement and delivery of said water shall be established by the Secretary after consultation with the Contractor. Except as provided in the OM&R Transfer Contract, the proceeds accruing from the disposal of such water shall be credited to the Development Fund and applied toward the costs of the project as determined by the Secretary.

7.2 Operation and Maintenance and Water Deliveries after Completion of Construction. Except as provided in the OM&R Transfer Contract and any future agreements for the transfer of OM&R of the project works or portions thereof, upon completion of construction of a construction stage or upon completion of construction of the project, the United States shall operate and maintain such construction stage or the project and shall make project water available to project water users.

8. DELIVERY OF WATER

8.1 Obligation of United States. Subject to the terms, conditions, and provisions set forth herein, the United States will deliver project water to Contractor and, during such periods as it operates and maintains the water supply system, the United States will also transport and

deliver said water to the subcontractors. After transfer of OM&R the United States will make deliveries of Colorado River water to the Operating Agency; deliveries of other project waters will be made pursuant to determinations made by the Secretary.

8.2 Term of Contract. Subject to the terms, conditions, and provisions set forth herein, this contract is for permanent service.

8.3 Conditions Relating to Delivery.

(a) The obligation of the United States to deliver water under this contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, dated September 30, 1968, 82 Stat. 885; the contract between the United States and the State of Arizona, dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of Arizona v. California et al., 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, as now issued or hereafter modified.

(ii) Executive A, Seventy-eighth Congress, Second Session, a treaty between the United States of

America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the water of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty.

(iii) The express understanding and agreement by the Contractor that this contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and the Contractor shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam,

Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to Contractor hereunder.

(iv) The right of the United States temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works whatsoever affecting, utilized or, in the opinion of the Secretary, necessary for delivery of water hereunder, it being understood that so far as feasible the United States will (1) do so during periods of low water demands and (2) give reasonable notice in advance of such temporary discontinuance or reduction.

(b) Delivery of Colorado River water by the United States under this contract shall be charged to the State of Arizona's apportionment under the aforementioned Supreme Court Decree of March 9, 1964, in Arizona v. California and will discharge to that extent the obligation of the United States to deliver water under the aforementioned contract between the United States and the State of Arizona, dated February 9, 1944.

8.4 Delivery Points. Colorado River water to be furnished to the Contractor pursuant to this contract will be delivered by the United States in the Colorado River at the point of diversion from Lake Havasu where the intake structures of the Havasu Pumping Plant are

constructed. Agua Fria and Upper Gila River system waters will be delivered to the Contractor at New Waddell and Buttes Dams, respectively. Delivery points for other project water supplies and for return flows will be determined by the Contracting Officer after consultation with the Contractor and/or the affected subcontractor therefor.

8.5 Measurement.

(a) The quantity of Colorado River water pumped from Lake Havasu for the project shall be measured by means of measuring devices to be installed as part of the project works. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available, estimate the amount of water delivered to the Contractor.

(b) Deliveries of project water to the various subcontractors shall be measured by means of measuring devices to be installed as part of the project works at the points along the various aqueducts at which such water may be diverted for each of said subcontractors, and/or at the points in the various reservoirs formed by the dams constructed as part of the project works at which such water may be diverted for subcontractors and/or at the points where return flow may be delivered. These points of measurement will be established by the Secretary after consultation with Contractor and the affected subcontractor. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available and after consultation with the Contractor and the affected subcontractor, estimate the amount of water delivered to each such subcontractor. The Secretary shall at all times have access over any lands

and rights-of-way of a subcontractor for the purpose of inspecting and checking said measuring devices.

8.6 Responsibility for Distribution of Water after Leaving Water Supply System. Whether or not the United States operates and maintains the project facilities, the United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water after said water has been diverted from the water supply system. At such time as the Operating Agency assumes responsibility for the OM&R of project works, the responsibility for diversion, carriage, and transportation of the water through the water supply system shall be the sole responsibility of the Operating Agency. Responsibility for distribution of water beyond the water supply system shall be that of the subcontractors to whom said water is delivered from the water supply system. The United States, its officers, agents, and employees, shall not be liable for damage or claim of damage of any nature whatsoever for which there is legal responsibility arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water, and each subcontractor shall hold the United States, its officers, agents, and employees, harmless from any and all such claims.

8.7 Quantity of Water to be Delivered.

(a) The Secretary reserves the right to determine that quantity of Colorado River water to be released each year from Lake Mead for use by the Central Arizona Project pursuant to applicable law, which shall include the quantity of water which may be allocated by the Secretary for use on Indian lands.

(b) The quantity of Colorado River water available under

this contract for project purposes shall not exceed the quantity of water available to Arizona under the aforementioned Supreme Court Decree in Arizona v. California and in Arizona's water delivery contract with the United States after first providing for satisfaction of:

(i) present perfected rights and perfected rights described in Article II(D) of the Decree and the rights of other Federal reservations established prior to September 30, 1968; Provided, however, That the quantities of Colorado River water reserved to satisfy the aforesaid rights shall not, except as provided in said Decree, be reduced under any circumstances or for any reason whatsoever including, without limitation, a temporary use permitted by the Secretary by other water users in Arizona, California, or Nevada, of water reserved pursuant to the foregoing but not needed during any calendar year; And provided further, That no rights to the recurrent use of such water shall accrue by reason of said temporary use; and

(ii) the quantities of water provided for in all water delivery contracts between the United States and water users in Arizona as of September 30, 1968.

(c) The quantity of Colorado River water available under this contract for project purposes, including water for use on Indian lands

shall have the same priority as to delivery as the quantities of Colorado River water delivered pursuant to water delivery contracts, Federal reservations of water, and other arrangements between the United States and water users in Arizona entered into subsequent to September 30, 1968, for use of Colorado River water on Federal, State or privately owned lands in Arizona in total quantities not to exceed 164,652 acre-feet of diversions per year; Provided, however, That the Contractor shall hold the United States, its officers, agents, employees, and successors or assigns, harmless as to any and all claims for damages to persons or to property direct or indirect and of whatever nature, arising out of or which may in any manner be connected with the operation and/or effect of this Subarticle.

(d) The limitation on contracting in Subarticle 8.7(c) above shall not apply to contracts with holders of present perfected rights to Colorado River water in Arizona or to the Secretary's order of November 24, 1982, reserving Colorado River water for the Cibola National Wildlife Refuge. Nothing in Subarticle 8.7(c) shall restrict the right of the Secretary under water service contracts referred to in said Subarticle to terminate and/or reduce any entity's entitlement to Colorado River water and to make that entitlement available to other water users in Arizona.

(e) During any year when the subcontractors cannot use any portion of their entitlement to project water, and such water cannot be resold or exchanged in accordance with the terms and conditions of the water service subcontracts, the Contractor shall have the right in its discretion to resell any or all of such water or to use any or all of such water for ground water recharge purposes, including the subsequent recovery and resale

of such water, subject to Federal law, including but not limited to the Reclamation Reform Act of 1982, State of Arizona law, and such rules and regulations as the Secretary may deem appropriate. Subject to the terms and conditions of water service subcontracts, the water orders of all subcontractors shall be met before any project water is made available to the Contractor under this provision.

8.8 Subcontracts.

(a) The United States shall be a party to subcontracts.

(b) The Secretary and the Contractor shall require in each subcontract that:

(i) unless and until otherwise provided by Congress, water from the Central Arizona Project shall not be made available directly or indirectly for the irrigation of lands not having a recent irrigation history, as determined by the Secretary, except in the case of Indian lands, national wildlife refuges, and, with the approval of the Secretary, State-administered wildlife management areas;

(ii) there be in effect measures, adequate in the judgment of the Secretary and the Contractor, to control expansion of irrigation from aquifers affected by irrigation in the Contractor's service area and to reduce pumping of ground water in the agricultural subcontractors' service areas by the amount of project water received by said agricultural subcontractors;

(iii) the canals and distribution systems through which water is conveyed after its delivery to the subcontractors shall be provided and maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses;

(iv) neither the Secretary, the Contractor nor any subcontractor shall pump or permit others to pump ground water from within the exterior boundaries of the service area of a subcontractor receiving water from the Central Arizona Project for any use outside of said subcontractor's service area unless the Secretary, the Contractor, and such subcontractor shall agree, or shall have previously agreed, that a surplus of ground water exists and that drainage is or was required;

(v) except as otherwise agreed by the Contracting Officer, neither the Contractor nor any subcontractor shall sell or otherwise dispose of or permit the sale or other disposition of any project water, including return flows, for use outside the Contractor's service area;

(vi) irrigation water made available thereunder may be made available by the Secretary for M&I purposes if and to the extent that such water is no longer required by the subcontractor for irrigation purposes and shall be made available in all cases

where lands receiving project water have been converted to municipal and industrial use; Provided, however, That subcontracts effectuating such transfers are subject to the approval of the Secretary and the Contractor, which approval shall not be withheld unreasonably; And provided further, That it shall be deemed unreasonable for the Secretary or the Contractor to withhold such approval on the basis that the right to convert from irrigation to M&I use for a specific development could better be exercised in some other subcontractor's service area. The water so converted from irrigation to M&I purposes will be delivered with the same priority and at the same rate per acre-foot as other M&I water. Likewise, subcontracts for furnishing water for M&I purposes, including, but not limited to, ground water recharge to the extent ground water recharge is consistent with Arizona law, shall provide that, if water to be delivered thereunder is not presently required for such purposes, such water may be made available by the Secretary to other users; Provided, further, That the subcontractor shall be relieved of its payment obligation under its subcontract only to the extent of the amount paid by such other users;

(vii) the acreage limitation provisions of Reclamation Laws shall apply solely to agricultural water service;

(viii) except as specifically provided therein, it shall be the provisions of this contract which shall be controlling in the event of any inconsistency between this contract and any subcontract;

(ix) the subcontractor shall levy all necessary assessments, tolls, and other charges and shall use all of the authority and resources available to the subcontractor to collect the same in order that the subcontractor may meet its obligations thereunder to make in full all payments required under said subcontract on or before the date such payments become due and to meet other obligations under the subcontracts;

(x) the subcontractor establish, maintain, and provide the United States and the Contractor with land, water use, and crop census records.

8.9 Shortages. As provided in Section 301(b) of the Basin Project Act, Article II(B)(3) of the Decree of the Supreme Court of the United States in Arizona v. California, 376 U.S. 340, dated March 9, 1964, shall be so administered that in any year in which, as determined by the Secretary, there is insufficient mainstream Colorado River water available for release to satisfy the annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada, diversions from the mainstream of the

Colorado River for the Central Arizona Project and for other uses in Arizona under contracts or other agreements with the United States executed subsequent to September 30, 1968, shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under contracts existing as of September 30, 1968, with the United States by diversion works heretofore constructed, and by other Federal reservations in California of 4,400,000 acre-feet of Colorado River water, and by users of the same character in Arizona and Nevada. Water users in the State of Nevada shall not be required to bear shortages in any proportion greater than would have been imposed in the absence of said Section 301(b), nor shall said Section affect the relative priorities, among themselves, of water users in Arizona, California, and Nevada which are senior to diversions for the Central Arizona Project, or amend any provisions of said Decree. The aforesaid limitation stated in Section 301(b) shall not apply so long as the Secretary shall determine and proclaim that means are available and in operation which augment the water supply of the Colorado River system in such quantity as to make sufficient Colorado River mainstream water available for release to satisfy annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada.

8.10 Rate of Diversions of Colorado River Water. Subject to (a) the first proviso in Section 301(a) of the Basin Project Act, (b) the provisions of Subarticle 10.6(b) hereof, and (c) the provisions of Subarticle 8.7(a) hereof, any capacity in the Granite Reef Aqueduct in excess of 2,500 cubic feet per second may be utilized in the operations of

the project so as to maximize project benefits; Provided, however, That the use of such capacity shall not result in the annual diversion of a quantity of water in excess of the project's legal entitlement under the Basin Project Act.

8.11 Priority in Case of Shortage.

(a) Subject to the provisions of Section 304(e) of the Basin Project Act and the Secretary's allocation decisions published in the Federal Register on December 10, 1980, and March 24, 1983, any project water as defined in Subarticle 5.27(a) hereof, furnished through project facilities shall, in the event of shortages thereof, be reduced pro rata until exhausted, first for miscellaneous uses and next for agricultural uses, before such project water furnished for M&I uses is reduced. Thereafter, such project water for M&I uses will be reduced pro rata among all M&I water users. Each subcontract or other water delivery arrangement entered into pursuant to this contract shall so provide. This article shall not apply to Indian uses; Provided, however, That the relative priorities between Indian and non-Indian uses shall be as determined by the Secretary. Notwithstanding the provisions of this Subarticle, project water made available as a result of construction and operation of modifications to Roosevelt Dam as part of Plan 6 shall be distributed as provided in the Plan 6 Funding Agreement, and shall not be subject to reduction in the event of shortages of other project water supplies.

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

8.12 No Guarantee of Availability of Water. The United States

assumes no responsibility with respect to the quantity of water available for delivery pursuant to this contract. In no event shall the United States, its officers, agents, or employees, be liable for any damages, direct or indirect, of whatsoever nature, arising out of or in any way connected with any suspension or reduction in the delivery of water pursuant to this contract or with any shortage in the quantity of water available for delivery hereunder or to any subcontractor for any cause whatsoever including, but not limited to, drought, delay in the construction of the Navajo Project, the failure of the Navajo Project to be completed, or the lack of power for pumping.

8.13 Secretarial Control of Return Flow.

(a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of the Contractor as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for project use return flows within the boundaries of Contractor if in his judgment such return flow is not being put to a beneficial use. Any subcontractor may sell its return flow; Provided, however, That except as otherwise agreed by the Contracting Officer, such return flow may not be sold for use outside the Contractor's exterior boundaries; And provided further, That if the price received for such return flow is higher than the price paid for such project water, the amount of the excess price shall be paid by such subcontractor to the Contractor for application against the Contractor's repayment obligation to the United States.

(b) Any return flow captured by the United States and determined by the Secretary to be suitable and available for use on lands

within the service area and/or by any subcontractor therein may be delivered by the United States to a subcontractor as a part of the water supply for which the subcontractor contracts hereunder and such water shall be accounted and paid for pursuant to the provisions hereof.

8.14 Water and Air Pollution Control. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

8.15 Quality of Water. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of project water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer or the Operating Agency. Neither the United States nor the Operating Agency warrants the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

8.16 Exchange Water. Where the Secretary determines that a subcontractor is physically able to receive Colorado River mainstream water in exchange for or in replacement of existing supplies of surface water from sources other than the Colorado River to provide water supplies for users upstream from New Waddell, Modified Roosevelt and Buttes Dams, the Secretary may require that said subcontractor agree to accept said mainstream water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act.

8.17 Rights Reserved to the United States to Have Water Carried by Project Facilities. As a condition to the construction of project facilities and the delivery of water hereunder, the Contractor agrees that all project facilities will be available for the diversion, transportation, and carriage of water for Indian and non-Indian uses pursuant to arrangements or contracts therefor entered into on their behalf with the Secretary. In the event the responsibility for the OM&R of project facilities is transferred to and assumed by the Operating Agency, such transfer shall be subject to the condition that the Operating Agency shall divert, transport, and carry such water for such uses pursuant to the provisions of the aforesaid arrangements or contracts; Provided, however, That the aforesaid arrangements or contracts will include provisions for the payment of applicable construction costs and OM&R costs in accordance with Articles 9.3 and 9.6 of this contract.

8.18 Wheeling Non-Project Water. After taking into consideration the water delivery requirements of contracts for project water service and subject to availability of project capacity, non-project water may be wheeled through project facilities pursuant to wheeling agreements between the Contractor and the entity desiring to use project facilities for wheeling purposes. All such agreements shall be subject to the approval of the Contracting Officer who shall consider, among other things, the impact that the wheeling of such non-project water will have on the quality of project water. The Contractor and the Contracting Officer shall jointly develop a standard form of wheeling agreement including the rate structure for wheeling non-project water. All wheeling charges shall be paid to the Contractor by the entity contracting for the wheeling of non-project water.

The Contractor shall be entitled to retain revenues from wheeling charges sufficient to cover all OM&R costs associated with wheeling such non-project water, plus an administrative charge to be jointly determined by the Contractor and the Contracting Officer. All revenues from wheeling charges in excess of the OM&R costs and administrative charges shall be remitted by the Contractor to the Contracting Officer and deposited into the Development Fund.

8.19 Use of Project Power to Wheel Non-Project Water. If the energy requirements necessary for the pumping of project water are met and subject to the requirements of the Navajo Power Marketing Plan published in the Federal Register on December 21, 1987, project power may be used to wheel non-project water through project facilities under such conditions of use, including amounts, times of use, losses, costs, and other conditions as are established by the Contractor and approved by the Contracting Officer.

9. PAYMENT OF PROJECT COSTS ALLOCATED TO CONTRACTOR

9.1 Allocation of Construction Costs.

(a) Upon completion of each construction stage, the Contracting Officer will allocate costs to the various project purposes using the separable costs-remaining benefits procedure.

(b) For repayment purposes the reimbursable cost allocated to irrigation and M&I water by the separable costs-remaining benefits procedure will be combined and will hereinafter be termed the "water supply allocation." Upon completion of each construction stage, and at the periodic intervals specified in Subarticle 9.3(d), suballocation of the water supply allocation will be made to the irrigation and M&I water functions proportional to the water estimated to be used for each purpose

during the repayment period of each construction stage. The cost thus suballocated to the irrigation function will hereinafter be termed the "interest-free allocation." The cost thus suballocated to the M&I water function shall be added to the cost allocated to the commercial power function, plus interest during construction for both, and the sum will hereinafter be termed the "interest-bearing allocation."

(c) During construction, simple interest at the rate of 3.342 percent per annum shall be charged on costs allocated to the interest-bearing function as adjusted by the Secretary (i.e., net disbursements reduced by contract holdbacks, revenues applied to construction cost, and nonreimbursable expenses financed from construction funds). The total amount of all interest thus accumulated through the construction period prior to the date of completion of each construction stage shall be added to and become part of the actual construction cost of each construction stage. Interest during construction shall not accrue during any period in which construction is deferred or postponed by the United States as a result of a national emergency, as determined by the Secretary, if authority to forego such interest exists or is made available to the Secretary.

9.2 Repayment Concepts.

(a) Costs suballocated to non-Indian irrigation water will be paid by the subcontractors to the Contractor on the basis of their ability to pay as determined by the Secretary.

(b) Costs allocated to commercial power and costs suballocated to M&I water use shall be combined and repaid with interest at a rate of 3.342 percent per annum on the unpaid balance.

(c) Reimbursable costs allocated to recreation and fish

and wildlife are anticipated to be covered by a separate contract and repaid by the beneficiaries thereof.

(d) Repayment of costs allocated to irrigation of Indian lands shall be governed by the provisions of Section 402 of the Basin Project Act.

(e) Repayment of the project will occur by construction stages, with each stage having a separate 50-year repayment schedule. Upon completion of each cost allocation study referred to in Subarticle 9.1(a), subsequent to the initial study associated with the first construction stage, the Contractor's repayment obligation and the obligation allocated to each construction stage will be adjusted based on the latest cost allocation study, and the Contractor will be provided with a revised repayment schedule for the project and each construction stage. The Contracting Officer will adjust previous principal and interest payments made by the Contractor to reflect the new repayment schedule. For each year where an adjustment in payments is necessary, there will be an over or underpayment which will accrue with interest at the rate of 3.342 percent per annum (compounded annually) to the adjustment date. If the adjustment indicates that the Contractor overpaid principal and interest, the Contractor shall be entitled to a credit against its next payments to the United States. Conversely, if the Contractor owes additional principal and interest to the United States, such amount shall be paid to the United States by the Contractor within 12 months of receipt of a statement therefor from the Contracting Officer. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

9.3 Contractor's Construction Cost Repayment Obligation.

(a) The Contractor's repayment obligation shall consist of the total cost allocated to the water supply and power functions plus OM&R during construction and interest during construction on costs allocated to the M&I water and power functions, but shall not include costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors. Such entities shall include but not be limited to Indian tribes and councils in central Arizona receiving project water and the New Mexico recipients of water service from Hooker Dam or suitable alternative. The costs to be excluded shall be calculated as follows:

(i) Costs excluded from the Contractor's repayment obligation for New Mexico water service shall be determined by multiplying the project costs allocated to the water supply function by the ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to water users in Arizona in exchange for water delivered to users in New Mexico from or by means of project works, by the total quantity of Colorado River water projected to be delivered by the project throughout the overall repayment period.

(ii) The amount of other project costs which shall be excluded from the Contractor's repayment obligation shall be determined by multiplying the

project costs allocated to the water supply function by a ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to entities other than the Contractor, the subcontractors, and those users in New Mexico to whom water has been made available through the construction of Hooker Dam or suitable alternative by the total quantity of project water projected to be delivered throughout the overall repayment period; Provided, That project water projected to be delivered to such users will be computed based on an assumption of full development not later than the year 2005.

(b) The costs determined under Subarticles 9.3(a)(i) and (ii) above shall be subtracted from the water supply costs obtained from the separable costs-remaining benefits procedure to determine the Contractor's water supply costs. The Contracting Officer shall suballocate the Contractor's water supply costs to each of the construction stages based on the ratios obtained by dividing the allocable cost of the construction stage by the allocable cost of the project (see Operation 1, Exhibit "A"). The water supply costs assigned to each construction stage are then further suballocated between irrigation and M&I water use in proportion to projected total water deliveries to each function over the 50-year repayment period of each construction stage (Operation 2, Exhibit "A"). The summarization of the suballocations to each construction stage determines the total water

supply cost to be assigned to irrigation and M&I water use (Operation 3, Exhibit "A"). To determine the Contractor's repayment obligation, the Contractor's water supply suballocation to irrigation and M&I water uses, and the power allocation from the separable costs-remaining benefits procedure, shall each be adjusted for any revenues received by the United States prior to the notice(s) of completion and for any contributions received by the United States under the Plan 6 Funding Agreement for the features constructed in that stage, and for the 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and pumping plants (see Article 9.7) to determine the net amount of each function assigned to the Contractor (Operation 4, Exhibit "A"). The Contractor's repayment obligation shall be the summation of the net amount for each function.

(c) Once the Contractor's estimated or final repayment obligation has been determined by the Contracting Officer, the obligation shall be allocated to each construction stage based on the ratio obtained by dividing the allocable cost of each construction stage by the allocable cost of the project. Each construction stage will have a separate 50-year repayment period. The repayment obligation for each stage will be divided into interest-bearing and interest-free components. The interest-free component shall be the amount allocable to irrigation purposes for the stage. The interest-bearing component will be the amount obtained by subtracting the irrigation allocation for the stage from the obligation for the stage. The principal payments for each stage shall be determined by applying the percentages in Subarticle 9.3(f) to the repayment obligation for each stage. The total payment for each stage for any year shall be equal to the principal payment plus interest at the rate of 3.342 percent

per annum on the unpaid interest-bearing component of the repayment obligation for each stage. For the water supply system, the portion of each principal payment which is made by the Contractor from irrigation revenues received by the Contractor each year will be used by the United States to reduce the interest-free obligation. The remaining portion of the principal payments made by the Contractor each year for the water supply system will be used by the United States to reduce the interest-bearing obligation, and once the interest-bearing obligation has been retired, the entire principal payment made by the Contractor will be applied by the United States toward the interest-free obligation. For the other construction stages, the entire principal payment made by the Contractor each year for such stages will be applied by the United States to reduce the interest-bearing obligation first, and once such obligation has been retired, to reduce the interest-free obligation.

(d) At 7-year intervals following the determination of the Contractor's repayment obligation for the water supply system, or at more frequent intervals if it becomes apparent to the Contracting Officer that a significant change in water use has or will occur, until such time as the interest-bearing obligation for each construction stage has been repaid, the Contracting Officer will re-estimate the proportions of total water deliveries to irrigation and M&I water use over the 50-year repayment period for each stage. At such intervals, the Contracting Officer will adjust the original interest-bearing and interest-free allocation for each stage based on the new estimates and recalculate all preceding interest payments. Differences between amounts owed and amounts paid by the Contractor shall be adjusted by the Contracting Officer, who shall apply a credit against the

Contractor's next payment due or notify the Contractor of the additional amount due, as the case may be. All such adjustments shall include interest at the rate of 3.342 percent per annum (compounded annually). Any additional payments required from the Contractor shall be made within 12 months of the Contractor's receipt of a statement from the Contracting Officer therefor. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

(e) The Contracting Officer will notify the Contractor of (i) its estimated repayment obligation when construction of the first construction stage is substantially complete and upon completion of each subsequent construction stage, and (ii) the actual repayment obligation when the final construction stage has been completed, as determined by the Contracting Officer. In the event that the project ultimately consists only of the water supply system, New Waddell Dam, and Modified Roosevelt Dam, the Contractor's actual repayment obligation shall be limited to $2.0 billion. If prior to completion of construction of such features the Contracting Officer determines that the Contractor's repayment obligation for such features will exceed $2.0 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation. If construction of any other construction stage will result in an increase in the Contractor's repayment obligation by an amount equal to or less than the respective amount identified in Exhibit "B," which is attached hereto and made part of this contract, the Contractor's repayment ceiling may, after consultation with the Contractor, be increased by the

Contracting Officer by an amount equal to or less than the respective amount identified in Exhibit "B" by written notice thereof from the Contracting Officer to the Contractor. If construction of such other construction stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B," the Contracting Officer shall consult with the Contractor and the Contractor and the Contracting Officer shall agree upon one of the following courses of action prior to initiation of construction of such construction stage: (1) that additional repayment ceiling be made available from other construction stages, in which event the Contractor's repayment ceiling will be increased to the agreed-to amount by written notice from the Contracting Officer to the Contractor; or (2) that this contract be renegotiated to increase the Contractor's repayment ceiling; Provided, That these courses of action shall also apply in the event that, prior to completion of construction of such stage, the Contracting Officer determines that the construction of such stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B."

(f) Annual percentages of the repayment obligation for each construction stage shall be those set out in the following schedule or any revision thereof mutually agreed upon:

Repayment Year	Percent of Repayment Obligation (Annual)
1-7	1.0
8-14	1.3
15-21	1.6
22-28	2.0
29-35	2.6
36-42	2.7
43-49	2.7
50	2.7

(g) In the event that the Secretary contracts for delivery of non-project water under the provisions of Article 10.1, capital charges associated with such delivery shall be calculated, charged, and utilized in the same manner as capital charges deposited in the Development Fund pursuant to Article 8.18.

9.4 Payment of Contractor's Construction Cost Repayment Obligation.

(a) The Contractor shall make annual payments to the United States, to be credited to the Development Fund, which shall be sufficient, when combined with accruals from the other sources described in Section 403(f) of the Basin Project Act, the Hoover Power Plant Act of 1984, and other miscellaneous revenues, including but not limited to net wheeling charges, to effect repayment of the repayment obligation for each construction stage within a period of not more than 50 years beginning with the year following substantial completion of each construction stage. The Contractor's first payment shall be due on or before January 15 of the year following the year in which the Secretary announces the substantial completion of each construction stage. Annual payments thereafter shall be due on or before January 15 of each following year.

(b) The Contractor agrees to make annual payments calculated by the Secretary as follows:

(i) Calculate the annual principal payments required by the schedule in Subarticle 9.3(f) or any revision thereof for each construction stage.

(ii) Add to (i) the annual interest, at 3.342 percent, on the unpaid balance of the interest-bearing

allocation for each construction stage.

(iii) Determine the total amount of all interest and principal payments due for all construction stages.

(iv) Subtract therefrom the revenues estimated to be available from the Development Fund anticipating a zero balance at the end of each year in the Development Fund.

(v) Make adjustments for differences between estimated and actual revenues for the preceding year.

(c) On or before each December 15, beginning with December 15 of the year in which the Secretary notifies the Contractor of the substantial completion of the first construction stage, the Secretary will notify the Contractor of the amount of the annual payment due on the following January 15, which has been determined by the Secretary on the basis of the aforesaid calculation.

(d) The Contractor may make additional payments on the repayment obligation at any time subject to such terms and conditions as may be agreed upon by the Contractor and the Contracting Officer; Provided, however, That all interest due is paid at the same time, whereupon appropriate adjustments in the schedule of future payments will be made by the Secretary, who shall as promptly as possible give the Contractor written notice of the adjusted repayment schedule.

(e) It is understood and agreed that the Contractor shall be obligated for the payments set forth in Subarticle 9.4(a) hereof and that regardless of the delinquency or default in payment of any charges

due to the Contractor from any subcontractor, or a diminution in the water supply available to the Contractor, or regardless of any other reason, the Contractor shall complete repayment of each construction stage within a 50-year period beginning in the year following the announcement by the Secretary of substantial completion of such construction stage.

9.5 Commercial Power Rates. The Secretary will, consistent with applicable law, periodically review and provide for appropriate adjustments in the rates established for the sales of power and energy, revenues from which contribute to the Development Fund.

9.6 Other Costs Borne by the Contractor.

(a) In addition to the payments provided for in Article 9.4 hereof, and subject to the provisions of Subarticle 9.6(d) hereof, during such periods as the United States operates and maintains completed construction stages, the Contractor shall make advance payments for OM&R costs incurred by the United States. The United States will furnish the Contractor with an estimate in writing at least 6 months prior to substantial completion of construction of the water supply system, of the OM&R cost due from the Contractor to the end of the then current year, together with an estimate of such cost for the calendar year immediately following. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer, the Contractor shall advance to the United States the payments for the estimated OM&R cost to the end of the then current year and without further notice or demand shall on December 15 of the then current year and on June 15 of the following year advance to the United States in equal semiannual installments the Contractor's share of the estimated cost, including supervision and

administrative expense for the OM&R of the water supply system. Advance payments shall be made in subsequent years by the Contractor to the United States on the basis of estimates to be furnished by the United States on or before November 15 preceding said subsequent year and the advances of said payments shall be due and payable in equal semiannual payments on the following December 15 and June 15. Said OM&R costs are the total annual OM&R costs of completed construction stages which are allocated to the irrigation and M&I water supply functions less (i) the costs described in Subarticle 9.6(c) hereof, and (ii) an amount determined by multiplying the total of said annual costs by the ratio obtained by dividing the estimated amount of project water projected to be delivered in the subsequent year to entities other than the Contractor, the subcontractors, and those entities in New Mexico to which project water will be made available from Hooker Dam or suitable alternative, by the total amount of project water estimated to be delivered for use in that year.

(b) Differences between actual OM&R costs and the estimated costs shall be determined by the Contracting Officer and shall be adjusted in next succeeding estimates; Provided, however, That if in the opinion of the Contracting Officer the amounts advanced by the Contractor for any year are likely to be insufficient to pay the above-mentioned OM&R costs during such year, additional and sufficient sums of money shall be paid forthwith by the Contractor to the United States upon notice thereof and demand therefor by the Contracting Officer; Provided, further, That the United States will give Contractor reasonable notice in advance of any such deficiency.

(c) The Contractor's obligation to pay said OM&R costs

of completed construction stages will be reduced to the extent that project water is made available for use in New Mexico following completion of Hooker Dam or suitable alternative. Said reduction will be in the proportion which the quantity of project water projected to be delivered to water users in Arizona, in exchange for Gila River system waters delivered to water users in New Mexico from or by means of project works, bears to the total quantity of Colorado River water projected to be delivered to the project that year.

(d) In the event that responsibility for OM&R of project facilities is transferred to and assumed by the Contractor, the Contractor shall be relieved of the obligation to make OM&R payments associated with such facilities under Subarticle 9.6(a) of this contract. In that event, the United States shall pay or provide for payment of OM&R costs associated with delivery of water to entities other than the Contractor and the subcontractors. Such costs shall be computed in accordance with Subarticle 9.6(a) of this contract. If the Contractor does not receive payment in advance for such costs, the Contractor shall have no obligation to deliver such water.

(e) During the Hoover Dam cost-repayment period, the Contractor shall pay to the United States the sum of $0.25 for each acre-foot of water pumped from Lake Havasu for miscellaneous and M&I water purposes as determined by the Contracting Officer. The quantity of water pumped for such purposes will be determined by the Contracting Officer at the end of each calendar year and the Contractor notified of the amount due by March 1 of each subsequent year. Payment shall be due on May 1 following notification. Said payment shall be credited to the Colorado River Dam Fund

established by Section 2 of the Boulder Canyon Project Act.

9.7 Repayment of Costs of Excess Capacity in Granite Reef Aqueduct. The costs of providing any capacity in the Granite Reef Aqueduct and pumping plants in excess of 2,500 cubic feet per second shall be repaid by Contractor from funds available to Arizona pursuant to the provisions of Section 403(f) of the Basin Project Act, or by funds from sources other than the Development Fund.

9.8 Ad Valorem Taxes, Assessments, Tolls, and Other Charges. Within the legal limits available to it, the Contractor shall levy ad valorem taxes upon the taxable property within the service area of the Contractor at rates determined necessary by the Contractor to raise funds which, together with the revenues from the sale of water and such financial assistance from the Development Fund as the Secretary determines is available therefor, are sufficient to meet the obligations of the Contractor to make in full all payments to the United States on or before the date such payments become due and to meet its other obligations under this contract.

9.9 Continuation of Payments After Project Payout. Following payment to the United States of the Contractor's final payment for the last construction stage, the Contractor shall continue to make annual payments to the United States to be credited to the Development Fund in amounts equal to the average annual principal payment for the project during the overall repayment period. In the event that no augmentation project, as contemplated in the Basin Project Act, has been authorized or is under active consideration by the Congress at the time project construction costs have been repaid in full, payments under this formula will be not required; Provided, however, That payments will commence after repayment of the

project costs pursuant to the formula, or any adjustment thereof agreed to by the parties, at such time as an augmentation project is authorized by Congress and the costs thereof allocated to the Contractor are determined by the Secretary.

9.10 Defaults.

(a) The Contractor shall pay a penalty on payments, installments or charges which become delinquent, computed at the rate of 1 percent per month on the amount of such delinquent payments, installments, or charges from and after the date when the same become due until paid.

(b) No water shall be furnished to the Contractor during any period in which the Contractor may be in arrears more than 12 months in the payments to the United States required by Article 9.4 hereof.

(c) All rights of action for breach of this contract are reserved to the United States as provided by Federal law.

10. GENERAL PROVISIONS

10.1 Other Contracts. The Secretary reserves the right to contract directly with other water using entities concerning water supply through project facilities. In the event this occurs, the provisions of Article 8.17 hereof shall be applicable.

10.2 Title to Project Works. Title to all water supply system works and all project facilities constructed pursuant to the Basin Project Act and this contract shall be and remain in the United States until otherwise provided by Congress.

10.3 Reserve Funds.

(a) (i) Commencing with notice of transfer of OM&R for the Granite Reef Aqueduct, including the Havasu Pumping Plant, the Contractor

shall accumulate and maintain an emergency OM&R reserve fund, which the Contractor shall keep available to meet costs incurred during periods of interruption of water service.

(ii) The Contractor shall accumulate the reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $400,000 in any year in which the fund balance is less than $4,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for such purposes as those identified in Subarticle 10.3(a)(iv) hereof. Such annual deposits and the accumulation of interest and dividends to the reserve fund shall continue until $4,000,000 is accumulated. Interest and dividends accruing to fund balances shall be added to the fund in any year when the fund balance is greater than $4,000,000; Provided, That in no event shall the fund be increased to an amount greater than the actual amount of fixed OM&R costs for the preceding year as mutually determined by the Contractor and the Contracting Officer. Any balance in the fund in excess of the amount of fixed OM&R costs for the previous year shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted in consideration of the risk and uncertainty stemming from the size and complexity of the project, the size of the annual OM&R budget, additions to, deletions from, or changes in project works, or OM&R costs not

contemplated when this contract was executed.

(iv) The Contractor may make expenditures from such reserve fund only for meeting unforeseen and extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs (in situations where recurrence of severe operation and maintenance problems can be avoided or eliminated). Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) During any period in which any of the project works are operated and maintained by the United States, the reserve fund shall be available for like use by the United States.

(vi) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement indicating the principal and accumulated interest in the emergency OM&R reserve fund as of December 31 of the preceding year.

(b) (i) No later than 1 year following the Contractor's last construction advance under the Plan 6 Funding Agreement, the Contractor shall accumulate and maintain a repayment reserve fund to help assure payments to the United States under this contract.

(ii) The Contractor shall accumulate such reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $4,000,000 in any year in which the fund balance is less than $40,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for the

purpose for which it was established. Such annual deposits and the accumulation of interest to the reserve fund shall continue until $40,000,000 is accumulated. Any balance in the fund in excess of $40,000,000 shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted.

(iv) Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement of the principal and accumulated interest in the repayment reserve fund as of December 31 of the preceding year.

10.4 Recreational Use of Water Facilities.

(a) The enhancement of recreational opportunities in connection with the project works authorized pursuant to Title III of the Basin Project Act shall be in accordance with the provisions of the Federal Water Project Recreation Act, 79 Stat. 213, dated July 9, 1965, except as provided in Subarticle 10.4(b) hereof.

(b) Recreational development at Orme Dam and Reservoir shall be governed by the provisions of Section 302(d) of the Basin Project Act.

10.5 Confirmation of Contract.

(a) The Contractor, after the execution of this contract,

shall promptly seek to secure a decree of a court of competent jurisdiction of the State of Arizona confirming the execution of this contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor. This contract shall not be binding on the United States or the Contractor until such final decree has been entered.

(b) This contract shall be indivisible for purposes of validation and shall not be binding on the United States or the Contractor unless validated pursuant to the provisions of Subarticle 10.5(a) hereof in each and all of its terms and conditions.

10.6 Rules, Regulations, and Determinations.

(a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Reclamation Law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation Law.

(b) The Contracting Officer, after an opportunity has been offered to the Contractor for consultation, shall have the right to make rules, regulations, and determinations consistent with the provisions of this contract, the laws of the United States and the State of Arizona, including, without limitation, rules, regulations, and determinations relative to maximizing project benefits from pumping from Lake Havasu, the rate and schedule of pumping therefrom and the rate and schedule of pumping at the Granite Reef pumping plants, to add to or modify said rules, regulations, and determinations as may be deemed proper and necessary to

carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The Contractor and each subcontractor shall observe such rules, regulations, and determinations and each subcontract shall so provide.

(c) Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor and shall be conclusive upon the parties.

10.7 Books, Records, and Reports. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: the Contractor's financial transactions, water supply data, project operation, maintenance and replacement logs, project land and right-of-way use agreements, and other matters specifically relating to this contract that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

10.8 Notices. Any notice, demand, or request authorized or

required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States, when mailed, postage prepaid, or delivered to the General Manager of the Contractor, 23636 North 7th Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

10.9 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

10.10 Changes in Contractor's Organization. While this contract is in effect, no change shall be made in the Contractor's organization, by exclusion of lands, by dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written consent; Provided, however, That approval is hereby given to the inclusion of other counties as part of Contractor's service area, except, however, that the United States shall not be required, under this contract, to construct project facilities to serve lands within said additional counties.

10.11 Assignment Limited--Successors and Assigns Obligated. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this

contract or any part or interest therein shall be valid until approved in writing by the Contracting Officer.

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

10.13 Equal Opportunity. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment

without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Contracting Officer, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

10.14 Compliance With Civil Rights Laws and Regulations.

(a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures

necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

10.15 Officials Not to Benefit. No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

11. STATUS OF DECEMBER 15, 1972 CONTRACT

Upon judicial confirmation of this contract, the December 15, 1972 contract entitled "Contract Between the United States and the Central Arizona Water Conservation District For Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), shall be superseded and replaced by this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
Assistant Secretary-Water and Science
Department of the Interior

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

ATTEST:

Marilyn H. Rinstadt
Secretary

By _____
President

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 1 SUBALLOCATION OF CONTRACTOR'S WATER SUPPLY COSTS TO CONSTRUCTION STAGES:

Construction Stage	Allocable Cost ($M)	Percentage	Water Supply Cost ($M)
Water Supply System	1,500	71%	1,280
New Waddell	300	14%	256
Cliff Alternative	100	5%	85
Tucson Term. Storage	60	3%	51
Hooker Alternative	50	2%	43
Buttes	100	5%	85
Total	2,110	100%	1,800

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 2 SUBALLOCATION OF WATER SUPPLY COST:

Construction Stage	Allocable Cost ($M) Construction	IDC	Water Distribution (%) Irrigation	M&I
Water Supply System	1,280	200	58%	42%
New Waddell	256	40	54%	46%
Cliff Alternative	85	10	54%	46%
Tucson Term. Storage	51	10	53%	47%
Hooker Alternative	43	10	50%	50%
Buttes	85	10	50%	50%
Total	1,800	280	100%	

	Construction Cost Distribution ($M) Irrigation	M&I	IDC Cost Distribution ($M) Irrigation	M&I
Water Supply System	742	538	116	84
New Waddell	138	118	22	18
Cliff Alternative	46	39	5	5
Tucson Term. Storage	27	24	5	5
Hooker Alternative	21	21	5	5
Buttes	43	43	5	5
Total	1,017	783	158	122

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 3 DETERMINATION OF TOTAL WATER SUPPLY COST:

	Total Cost Distribution ($M)		
	Irrigation	M&I	Total
Water Supply System	742	622	1,364
New Waddell	138	136	274
Cliff Alternative	46	44	90
Tucson Term. Storage	27	29	56
Hooker Alternative	21	26	47
Buttes	43	48	91
Total	1,017	905	1,922

Irrigation = Irrigation construction cost
M&I = M&I construction cost + M&I IDC

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 4 ADJUSTMENTS TO ALLOCATED COST:

	Irrigation Cost ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)	M&I ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)
Water Supply System	742	-4		33	622	10		32
New Waddell	138		-45		136		-135	
Cliff Alternative	46				44		-30	
Tucson Term. Storage	27				29			
Hooker Alternative	21				26			
Buttes	43				48			
Total	1,017	-4	-45	33	905	10	-165	32

	Power Cost ($M)	Interim Operations ($M)	Total ($M)
Water Supply System	328	-100	1,663
New Waddell	61		155
Cliff Alternative	20		80
Tucson Term. Storage	12		68
Hooker Alternative	9		56
Buttes	19		110
Total	449	-100	2,132

EXHIBIT "B"

CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD) REPAYMENT CEILING (Billions of Dollars)

		Remaining Potential Stages				
	Water Supply System, New Waddell, and modified Roosevelt Dams	Tucson Terminal Storage	Cliff Dam Alternative	Hooker Dam Alternative	Buttes Dam	Total
Amount allocable to CAWCD repayment ceiling based on October 1988 prices.	$1.681	$.058	$.060	$.035	$.100	$.253
Inflation (4%) on features remaining to be completed, plus an amount for unforeseen contingencies (.82 of the inflation component)[1]	.100	.032	.035	.047	.133	$.247
Additional costs which could be allocated to CAWCD if the Gila River Indian Community does not take CAP water	.259	----	----	----	----	----
	----	----	----	----	----	----
Total	$2.040	$.090	$.095	$.082	$.233	$.500
Rounded	$2.000					$.500

[1] Inflation calculations based on the assumption that Tucson terminal storage and the Cliff Dam alternative are completed in 1995, and that the Hooker Dam alternative and Buttes Dam are completed in 2002.

Exhibit "B"

Assignment among RWCD, CAWCD and The United States
(See Exhibit "12.3." to Agreement)

EXHIBIT "12.3"

RWCD ASSIGNMENT TO CITIES

ASSIGNMENT

THIS AGREEMENT, dated as of February 12, 1988, is made and entered into by and among the United States of America acting through the Secretary of the Interior, the Central Arizona Water Conservation District, the Roosevelt Water Conservation District, the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa and Phoenix, and the Arizona Town of Gilbert.

R E C I T A L S

A. The United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members.

B. The foregoing settlement agreement requires the assignment by the Roosevelt Water Conservation District to the Cities and Town participating in the settlement of a portion of the agricultural water supply available to Roosevelt Water Conservation District from the Central Arizona Project.

C. The settlement agreement further requires the Secretary of the Interior, in certain events, to make available to the Cities and Town participating in the settlement a portion of the

agricultural water supply otherwise available from the Central Arizona Project.

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix and the Town of Gilbert.

(b) "City" shall mean any one of the Cities.

(c) "Contractor" shall mean the Central Arizona Water Conservation District.

(d) "Repayment Contract" shall mean the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 15, 1972 (Contract No. 14-06-W-245), and any amendment or revision thereof.

(e) "Secretary" and "Contracting Officer" shall mean the Secretary of the Interior or his duly authorized representative.

(f) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America; the Salt River Pima-Maricopa Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District.

(g) "Subcontract" shall mean the Subcontract among the United States, the Central Arizona Water Conservation District, and the Roosevelt Water Conservation District, Providing for Water Service, Central Arizona Project, dated [to be supplied] (Contract No. [to be supplied]).

(h) "Subcontractor" shall mean the Roosevelt Water Conservation District.

All other terms used in this Agreement which are defined in the Repayment Contract or the Subcontract shall have the meanings ascribed to them in the Repayment Contract and the Subcontract.

2. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, and for each Year thereafter until the term of the Subcontract expires, Subcontractor hereby assigns to the Cities an amount of Project Water, to be taken from Subcontractor's annual entitlement to Agricultural Water under Article 4.13 of the Subcontract, equal to the lesser of (a) 5,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, or (b) such amount of Project Water as is available from Subcontractor's annual entitlement to Agricultural Water after first providing for delivery to the Subcontractor, at the Subcontractor's Project turnout, of 8,000 acre-feet of Agricultural Water.

3. (a) If and when, as a result of a reduction in the acreage of eligible lands in Subcontractor's service area,

Subcontractor's entitlement to Agricultural Water under Article 4.13 of its Subcontract is insufficient to provide for the delivery to the Cities at the Cities' Project turnouts of a total amount of 3,000 acre-feet of Project Water (after first providing for the delivery of Subcontractor's entitlement to Agricultural Water as determined in accordance with subparagraph (b) of this Paragraph) in a Year in which the total supply of Agricultural Water available for delivery from the Project is 450,000 acre-feet or more, the Secretary shall thereafter make available for delivery to the Cities from the total supply of Agricultural Water otherwise available for delivery from the Project in each Year an amount of Project Water equal to the difference between (i) 3,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, and (ii) the amount of Project Water available to the Cities as a result of the assignment made in Paragraph 2 of this Agreement.

(b) If and when the provisions of subparagraph (a) of this Paragraph are implemented, Subcontractor's entitlement (i) to 8,000 acre-feet of Agricultural Water under subparagraph (b) of Paragraph 2 of this Agreement or (ii) to such lesser amount of Agricultural Water as may be determined in conformance with the provisions contained in subparagraph (d) of Paragraph 12 of this Agreement shall be subject to reduction in an amount equal to Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract multiplied by the amount of Agricultural Water made available by the Secretary for delivery to the Cities pursuant to subparagraph (a) of this Paragraph.

(c) Attached hereto as Appendix A are examples of how Paragraphs 2 and 3 of this Agreement are intended to operate under various conditions.

4. (a) Project Water made available to the Cities pursuant to Paragraph 2 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	972 acre-feet per Year;
City of Glendale	=	682 acre-feet per Year;
City of Scottsdale	=	23 acre-feet per Year;
City of Tempe	=	23 acre-feet per Year;
City of Mesa	=	627 acre-feet per Year;
City of Phoenix	=	1,136 acre-feet per Year;
Town of Gilbert	=	1,537 acre-feet per Year;
TOTAL	=	5,000 acre-feet per Year.

(b) Project Water made available to the Cities pursuant to Paragraph 3 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	583 acre-feet per Year;
City of Glendale	=	409 acre-feet per Year;
City of Scottsdale	=	14 acre-feet per Year;
City of Tempe	=	14 acre-feet per Year;
City of Mesa	=	376 acre-feet per Year;
City of Phoenix	=	682 acre-feet per Year;
Town of Gilbert	=	922 acre-feet per Year;
TOTAL	=	3,000 acre-feet per Year.

(c) Prior to the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted by mutual agreement of such Cities. On and after the enforceability date of the Settlement Agreement, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted only by mutual agreement of such Cities, the Contractor, and the United States.

(d) In the event this Agreement shall become effective and any City ("designating City") entitled to receive water hereunder is unable to take delivery of such water by virtue of not having constructed a treatment plant capable of taking deliveries of water from the Central Arizona Project, the designating City shall in writing designate one or more Cities which are also parties to this Agreement to act as the interim recipients ("interim recipient") of the designating City's water, and water made available to the designating City under this Agreement shall be delivered by Contractor to the interim recipient(s) until such time as the designating City's treatment plant is completed and ready to take delivery of and treat deliveries of water from the Central Arizona Project. The designating City shall notify Contractor and Subcontractor of any such designation and shall also provide Contractor and Subcontractor with copies of any agreement between the designating City and the interim recipient(s). Any

such agreement shall not be inconsistent with any provisions of the Repayment Contract, the Subcontract, or this Agreement.

5. Notwithstanding anything in the Repayment Contract or the Subcontract to the contrary, Project Water made available to the Cities pursuant to this Agreement may be used for any M&I Water uses including but not limited to ground water recharge.

6. Notwithstanding any schedule or other instruction to the contrary, Project Water made available to the Cities pursuant to this Agreement, including any water delivered under a designation agreement entered into pursuant to Paragraph 4(d) hereof, shall be accounted for and treated by the Contractor and the Contracting Officer as having been scheduled for delivery by the Cities, and delivered to the Cities, prior to the delivery of any portion of the Cities' entitlements to Project M&I Water under the Cities' M&I Water service subcontracts (City of Chandler, Contract No. 5-07-30-W0070; City of Glendale, Contract No. 5-07-30-W0062; City of Scottsdale, Contract No. 5-07-30-W0063; City of Tempe, Contract No. 5-07-30-W0061; City of Mesa, Contract No. 5-07-30-W0060; City of Phoenix, Contract No. 5-07-30-W0059; Town of Gilbert, Contract No. [to be supplied]), prior to the delivery of any portion of the Cities' entitlements to under the Cities' Project Water Lease Agreements (Exhibits "3.m.1" through "3.m.7" of the Settlement Agreement), and prior to the delivery of any portion of the Cities' entitlements to "Colorado River water" under and as defined in the Cities' River Water Exchange Contracts (Exhibits "3.h.1" through "3.h.7" of the Settlement Agreement).

7. Except as otherwise provided in Paragraph 11 hereof, the Cities shall make payment for Project Water made available to the Cities pursuant to this Agreement in accordance with the terms and conditions of contracts to be entered into among the United States, the Contractor, and each of the Cities, the forms of which are attached as Exhibits "3.h.1" through "3.h.7" to the Settlement Agreement.

8. Except as provided in Paragraph 10 of this Agreement, nothing in this Agreement shall relieve the Subcontractor of its obligation to make the payments required in the Subcontract.

9. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract, the costs associated with the delivery of Project Water to the Cities pursuant to this Agreement shall be nonreimbursable, and such costs shall be excluded from the Contractor's repayment obligation.

10. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the Subcontractor's obligation to pay Agricultural Water service capital charges pursuant to Subarticle 5.2(a) of the Subcontract shall be reduced in each Year by an amount equal to $2.00 per acre-foot, or such amount as may be determined by the Contracting Officer based on payment capacity determinations provided for in the Repayment Contract, multiplied by the total amount of Project Water assigned by the Subcontractor

to the Cities pursuant to Paragraph 2 of this Agreement and scheduled for delivery by the Cities in such Year.

11. (a) Each City agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any operation, maintenance, and replacement costs associated with Project Water made available for delivery to the City pursuant to Paragraph 2 of this Agreement. Each City further agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any Agricultural Water service capital charges associated with any Project Water assigned by the Subcontractor to the City pursuant to Paragraph 2 of this Agreement. The liability of each City under this Paragraph 11(a) shall be its sole and separate obligation, and shall not be an obligation joint and several with any other City or Cities.

(b) In the event any City shall default and fail to indemnify Contractor or Subcontractor as required in Paragraph 11(a) hereof, then such City's entitlement to water under this Agreement shall be forfeit and such entitlement shall be redistributed pro rata to each of the other Cities which are parties to this Agreement. The redistribution of water shall be effected by means of a notice from Subcontractor and Contractor, if either has not been indemnified, to the defaulting City and to the other Cities which are parties to this Agreement, and such redistribution shall be effective on the thirty-fifth day after the notice is given. Within ten days of receiving the notice of re-distribution, each City other than the defaulting City shall pay to

Subcontractor or Contractor, as the case may be, its share of the amount the defaulting City shall have failed to pay, which share shall be in the proportion which the amount of water redistributed to such City bears to the total amount of water redistributed. In the event any City to which water is redistributed shall fail to make the payment hereby required to be made within the time herein prescribed, Subcontractor or Contractor, as the case may be, shall be free to redistribute such City's entitlement to redistributed water to any other City which makes such payment and which is also a party to this Agreement.

12. (a) Subcontractor's entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be 5.98 percent of the total supply of Agricultural Water available for delivery from the Project (subject to reduction by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer) unless, prior to the issuance by the Secretary of Notice of Completion of the Water Supply System, Subcontractor notifies the Contractor and the Contracting Officer that it wishes to reduce its entitlement to a lesser percentage of the total Agricultural Water supply. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement under Subarticle 4.13(a) of the Subcontract shall be as stated in the notice from the Subcontractor to the Contractor and the Contracting Officer.

(b) Notwithstanding the foregoing, the Contractor and the Contracting Officer may at any time prior to the issuance of

such Notice of Completion require the Subcontractor to specify its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract by notifying the Subcontractor that it must specify such entitlement within six months of the date that the Contractor and the Contracting Officer issue such notice. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be as specified by the Subcontractor in response to the notice issued by the Contractor and the Contracting Officer. In the event the Subcontractor fails to make such specification within the time required, Subcontractor's entitlement shall be fixed at 5.98 percent of the total Agricultural Water supply (subject to adjustment by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer).

(c) At the time the Subcontractor notifies the Contractor and the Contracting Officer of its percentage entitlement pursuant to subparagraph (a) of this Paragraph, or at the time the Subcontractor specifies its entitlement pursuant to subparagraph (b) of this Paragraph, Subcontractor may relinquish:

(i) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(a) of the Subcontract to be made available to the Subcontractor as a result of deductions made in other subcontractors' entitlements to Agricultural Water to reflect removal of eligible lands from agricultural use; and

(ii) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(b) of the Subcontract to be made available to the Subcontractor as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available;

Provided, however, that the Subcontractor shall relinquish at least 5,000 acre-feet, or the percentage of the projected Agricultural Water supply that most closely approximates 5,000 acre-feet, of any additional Agricultural Water entitlement to which the Subcontractor would be entitled under Subarticle 4.13(b) of the Subcontract as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available.

(d) Subject to the requirements and limitations of this Paragraph 12, Subcontractor may select its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract based upon its own evaluation of potential Agricultural Water supplies and its own requirements; Provided, however, that said Subcontractor's entitlement to Agricultural Water shall in no event exceed the lesser of 5.98 percent or the percentage entitlement determined by dividing the number of acres of eligible lands in the Subcontractor's service area by the total number of acres of eligible lands in the service areas of all subcontractors of Agricultural Water, as determined by the Contracting Officer.

13. Except as provided in this Agreement, all terms and conditions of the Subcontract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

Attest:

_____
Secretary

CENTRAL ARIZONA WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: George W. Barr
Title: President

Attest:

_____
Secretary

ROOSEVELT WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: Mark W. Dobson
Title: President

Attest:

_____
Clerk

Approved as to Form:

_____
City Attorney

CITY OF PHOENIX, a Municipal corporation, MARVIN A. ANDREWS, City Manager

By _____

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF SCOTTSDALE, an Arizona municipal corporation

By
Name: Herbert R. Drinkwater
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF GLENDALE, an Arizona municipal corporation

By
Name: George R. Renner
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF MESA, an Arizona municipal corporation

By
Name:
Title:

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF TEMPE, an Arizona municipal corporation

By
Name: Harry E. Mitchell
Title: Mayor

. . .

Attest:

Clerk, Acting

Approved as to Form:

City Attorney

CITY OF CHANDLER, an Arizona municipal corporation

By

Name: Richard Dugan

Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

TOWN OF GILBERT, an Arizona municipal corporation

By

Name: Steve M. Berman

Title:

. . .

APPENDIX A

The following are five examples of how Paragraphs 2 and 3 of the Assignment are intended to operate under varying water supply conditions and assuming varying entitlements to CAP Agricultural Water for Roosevelt Water Conservation District ("RWCD") under Subarticle 4.13(a) of RWCD's CAP Agricultural Subcontract.

EXAMPLE 1

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 1,000,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 5.98%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 59,800 AF.

(5.98% X 1,000,000 AF - 59,800 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 59,800 AF - 8,000 AF = 51,800 AF

5. RWCD's balance = 54,800 AF.

EXAMPLE 2

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 13,005 AF.

(2.89% X 450,000 AF = 13,005 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 13,005 AF - 8,000 AF = 5,005 AF.

5. RWCD's balance = 8,005 AF.

EXAMPLE 3

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,890 AF.

(2.89% X 100,000 AF = 2,890 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment = 0 (because RWCD's entitlement is sufficient to provide for delivery to the Cities of at least 3,000 AF in any year in which the total supply is 450,000 AF or more -- See Example 2).

EXAMPLE 4

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 10,980 AF.

(2.44% X 450,000 AF - 10,980 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 10,980 AF - 8,000 AF = 2,980 AF.

5. Cities' entitlement under Paragraph 3 of the Assignment =

(a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area:

Cities' entitlement = 3,000 AF - 2,980 AF = 20 AF

CITIES' TOTAL = 3,000 AF

(b) IF 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0

CITIES' TOTAL = 2,980 AF

EXAMPLE 5

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,440 AF.

(2.44% X 100,000 AF = 2,440 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment:

(a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement = 3,000 AF.

(b) RWCD's contribution = 2.44% X 3,000 AF = 73 AF.

(c) RWCD's net entitlement = 2,440 AF - 73 AF = 2,367 AF.

BUT

(d) If 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0.

Exhibit "C"

Total CAP Water Available to M&I:	443,067	A
SRPMIC Agreement Water Calculations		
• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	2,088	
Total Agreement Water Credit:	19,912	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	462,979	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	69.64%	

CAP Water Available to M&I: 443,067 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	**Delivery Without Agreement (AF)**	**Delivery With Agreement* (AF)**
Avondale	4,099	0.64%	0.00%	0	**2,833**	**2,855**
Peoria	17,849	2.79%	0.00%	0	**12,338**	**12,430**
Glendale	14,083	2.20%	13.64%	3,545	**9,735**	**12,276**
Phoenix	113,882	17.83%	22.73%	5,909	**78,721**	**83,422**
Scottsdale	19,702	3.08%	0.45%	118	**13,619**	**13,803**
Chaparral City	6,978	1.09%	0.00%	0	**4,824**	**4,859**
Prescott	7,127	1.12%	0.00%	0	**4,927**	**4,963**
Payson	4,995	0.78%	0.00%	0	**3,453**	**3,478**
Tempe	4,315	0.68%	0.45%	118	**2,983**	**3,067**
Mesa	29,527	4.62%	12.55%	3,262	**20,411**	**22,834**
Apache Jct	6,000	0.94%	0.00%	0	**4,147**	**4,178**
Chandler	3,668	0.57%	19.45%	5,056	**2,536**	**6,075**
Gilbert	7,235	1.13%	30.74%	7,991	**5,001**	**10,604**
Casa Grande	8,884	1.39%	0.00%	0	**6,141**	**6,187**
Tucson	148,420	23.23%	0.00%	0	**102,595**	**103,359**
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

Total CAP Water Available to M&I:	218,338	A
SRPMIC Agreement Water Calculations		
• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	3,496	
Total Agreement Water Credit:	18,504	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	236,842	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	35.62%	

CAP Water Available to M&I: 218,338 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	**Delivery Without Agreement (AF)**	**Delivery With Agreement* (AF)**
Avondale	4,099	0.64%	0.00%	0	**1,385**	**1,460**
Peoria	17,849	2.79%	0.00%	0	**6,031**	**6,359**
Glendale	14,083	2.20%	13.64%	3,545	**4,759**	**6,280**
Phoenix	113,882	17.83%	22.73%	5,909	**38,481**	**42,675**
Scottsdale	19,702	3.08%	0.45%	118	**6,657**	**7,061**
Chaparral City	6,978	1.09%	0.00%	0	**2,358**	**2,486**
Prescott	7,127	1.12%	0.00%	0	**2,408**	**2,539**
Payson	4,995	0.78%	0.00%	0	**1,688**	**1,779**
Tempe	4,315	0.68%	0.45%	118	**1,458**	**1,579**
Mesa	29,527	4.62%	12.55%	3,262	**9,977**	**11,681**
Apache Jct	6,000	0.94%	0.00%	0	**2,027**	**2,137**
Chandler	3,668	0.57%	19.45%	5,056	**1,239**	**3,108**
Gilbert	7,235	1.13%	30.74%	7,991	**2,445**	**5,424**
Casa Grande	8,884	1.39%	0.00%	0	**3,002**	**3,165**
Tucson	148,420	23.23%	0.00%	0	**50,151**	**52,874**
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

EXHIBIT "3.h.3"

River Water Exchange Contract
City of Scottsdale, Arizona

Exhibit "3.h.3"
RIVER WATER EXCHANGE CONTRACT
City of Scottsdale, Arizona

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Exhibit "3.h.3"
RIVER WATER EXCHANGE CONTRACT
City of Scottsdale, Arizona

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Exhibits

Exhibit "A"	CAP Master Repayment Contract
Exhibit "B"	Assignment among RWCD, CAWCD and the United States
Exhibit "C"	SRPMIC Agreement Water Calculations (Tables 1 and 2)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE CITY OF SCOTTSDALE, ARIZONA
PROVIDING FOR WATER SERVICE

ARTICLE 1
Preamble

1. THIS CONTRACT, made as of the 12th day of February, 1988, in pursuance of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549, and 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), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, hereinafter referred to collectively as the "Federal Reclamation Laws," and the various authorities and responsibilities of the Secretary of the Interior in relation to Indians and Indian Tribes, as contained in Title 25 U.S.C. and 43 U.S.C. § 1457, among THE UNITED STATES OF AMERICA, acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as "CAWCD," a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the CITY OF SCOTTSDALE, Arizona, hereinafter referred to as the "City," with its principal place of business at 3939 Civic Center Plaza, Scottsdale, Arizona;

WITNESSETH, THAT:

ARTICLE 2
Explanatory Recitals

2. 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., CAWCD 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 CAWCD, shall be a party to contracts that are in conformity with and subsidiary to the master contract; and

WHEREAS, the United States and CAWCD entered into Contract No. 14-06-W-245 dated December 15, 1972, which was amended on

December 1, 1988, hereinafter referred to as the "Repayment Contract," a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, whereby CAWCD agrees to repay to the United States the reimbursable costs of the Central Arizona Project allocated to CAWCD; and

WHEREAS, the City has entered into a water service subcontract with the United States and CAWCD for municipal and industrial water service from water supplies available from the Central Arizona Project, Contract No. 5-07-30-W0063; and

WHEREAS, the United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert, Arizona, and CAWCD have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members, to finally resolve pending litigation on water rights and damage claims, and to seek funding for implementation of the settlement; and

WHEREAS, the United States, acting through the Secretary of the Interior, has both a trust and fiduciary responsibility to make the Salt River Pima-Maricopa Indian reservation a permanent Tribal homeland for the Salt River Pima-Maricopa Indian Community; and

. . .

WHEREAS, as part of the water rights settlement with the Salt River Pima-Maricopa Indian Community, the United States is required to contract with the City for the delivery through Central Arizona Project facilities of not to exceed one hundred (100) acre-feet per year of Colorado River water which was not included in the determination of water supplies available to the Central Arizona Project, plus certain additional amounts of Central Arizona Project water to be made available each year by the Roosevelt Water Conservation District or the Secretary of the Interior from Central Arizona Project water supplies otherwise available for agricultural use;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 3
Definitions

3. For purposes of this Contract:

(a) "Agricultural water" shall mean water made available from the Central Arizona Project for the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than five acres.

(b) "CAWCD's service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such other counties as may hereafter become part of the District, . . .

exclusive of any Indian reservation land lying wholly or partly within said Counties.

(c) "Central Arizona Project" or "CAP" or "project" shall mean the project and works authorized by Section 301(a) of the Colorado River Basin Project Act and constructed by the United States pursuant to the provisions of said Act.

(d) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix, and the Town of Gilbert.

(e) "Colorado River water" shall mean that Colorado River mainstream water to be delivered to the City under this Contract which has a Colorado River priority pre-dating September 30, 1968.

(f) "Contracting Officer" shall mean the Secretary or his authorized designee acting on his behalf.

(g) "Distribution works" shall mean those facilities constructed or used for the purpose of distributing water to or within the City's service area after said water has been transported through the water supply system to the City's project turnout(s).

(h) "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, as said statutes may hereafter be amended or revised.

. . .

(i) "Miscellaneous water" shall mean water made available from the Central Arizona Project, or by exchange for such water, for recreational and fish and wildlife purposes at other than project facilities, and which has a lesser priority of use than agricultural water.

(j) "Municipal and industrial water," hereinafter sometimes referred to as "M&I water," shall mean water made available from the Central Arizona Project other than agricultural water and miscellaneous water.

(k) "Notice of completion" shall mean the notice which the Contracting Officer issues to CAWCD to announce the substantial completion of the water supply system, or of those features of the project which include or comprise the water supply system, or of the entire project if constructed concurrently, thereby initiating payments therefor allocated to CAWCD.

(l) "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

(m) "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

(n) "Assignment Water" shall mean that water to be delivered to the City under this Contract which is made available to the City by the Roosevelt Water Conservation District ("RWCD") or the Secretary of the Interior pursuant to the Assignment, dated as of February 12, 1988, among the United States, CAWCD, RWCD,

. . .

and the Cities. A copy of the Assignment is attached hereto as Exhibit "B" and by this reference made a part hereof.

(o) "Project works" shall mean the principal works described in Section 301(a) of the Colorado River Basin Project Act, and appurtenances thereto, or as modified pursuant to the payment Contract, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

(p) "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from Colorado River water or Assignment Water as defined herein, but shall not include any water delivered through the project works for ground water recharge purposes.

(q) "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

(r) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, RWCD, the Roosevelt Irrigation District, the Cities, and CAWCD.

(s) "Subcontractor" shall mean any irrigation district, municipality, individual, or any other entity which enters into a water service subcontract with the United States and CAWCD in furtherance of the provisions of the Colorado River Basin Project Act.

(t) "Time of shortage" shall mean a calendar year for which the Secretary determines that a shortage exists pursuant to Section 301(b) of the Colorado River Basin Project Act, such that there is not sufficient water available for delivery from the Central Arizona Project in that year (after reduction in consideration of anticipated losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein) to meet fully the entitlements of Indian contractors and non-Indian municipal and industrial subcontractors of Central Arizona Project water supplies.

(u) "Transferred works" shall mean such features of the project or such facilities of the water supply system as to which OM&R responsibility is transferred from the United States to the Operating Agency.

(v) "Water supply system" shall mean Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila, and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

(w) "Year" shall mean the period between January 1 through the next succeeding December 31.

ARTICLE 4
Term

4. This Contract shall become effective upon its execution by the parties hereto and its term shall be perpetual.

ARTICLE 5
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 100 acre-feet; and

(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 23 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 14 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery point on the Colorado River, and shall be subject to reduction on

account of losses by reason of evaporation and seepage occurring during the transportation of such water through the water supply system to the City's project delivery point. Said losses occurring on the City's Colorado River water supplies shall be determined by the Contracting Officer or the Operating Agency, but shall not exceed the City's pro rata share of losses as compared to losses due to evaporation and seepage occurring during transportation through the water supply system of all water supplies delivered during a year.

(d) The City's entitlement to Assignment Water under Subparagraphs 5(b)(ii) and 5(b)(iii), and its rights and obligations with respect to such Assignment Water, hereof shall be subject to the terms and conditions of the Assignment attached hereto as Exhibit "B".

(e) The City's entitlement to Colorado River water and Assignment Water under this Contract shall be in addition to the City's entitlement to Central Arizona Project water for municipal and industrial use under the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0063).

(f) During such periods as it operates and maintains the Central Arizona Project, the United States shall deliver Colorado River water and Assignment Water to which the City is entitled under this Contract through the water supply system. Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the United States shall use all reasonable diligence to make available to the City the quantity of Colorado River water and Assignment

Water specified in the schedule submitted by the City in accordance with Article 6 hereof. After transfer of OM&R responsibility to the Operating Agency, the United States shall make deliveries of Colorado River water and Assignment Water to the Operating Agency which shall make subsequent delivery of such water to the City as provided herein.

(g) The obligation of the United States and the Operating Agency to deliver Colorado River water and Assignment Water to the City under this Contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, the contract between the United States and the State of Arizona dated February 9, 1944, the Opinion of the Supreme Court of the United States in the case of Arizona v. California et al., rendered June 3, 1963, 373 U.S. 546, and the Decree of that court in said case, entered March 9, 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as hereafter modified;

(ii) Executive A, Seventy-Eighth Congress, Second Session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to

the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty, all hereinafter referred to as the Mexican Water Treaty;

(iii) The express understanding and agreement by the City that this Contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this Contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and City shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam, Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to City hereunder; and

(iv) The right of the United States or the Operating Agency temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works whatsoever affecting, utilized or, in the opinion of the Secretary or

the Operating Agency, necessary for delivery of water hereunder, it being understood that so far as feasible the United States or the Operating Agency will (i) do so during periods of low water demands and (ii) give reasonable notice in advance of such temporary discontinuance or reduction.

(h) Subject to the terms and conditions herein, the United States and the Operating Agency shall be obligated to deliver Colorado River water and Assignment Water to the City without regard as to whether or not the Salt River Pima-Maricopa Indian Community exercises its right to use any or all of the exchange water referred to in Paragraph 12 of the Settlement Agreement.

(i) Delivery and use of Colorado River water and Assignment Water under this Contract is further conditioned on the following, and the City hereby agrees that:

(i) All uses of Colorado River water, Assignment Water and return flow shall be consistent with Arizona water law unless such law is inconsistent with the Congressional directives applicable to the Central Arizona Project.

(ii) The system or systems through which Colorado River water and Assignment Water for municipal and industrial (including groundwater recharge) purposes is conveyed after delivery to the City shall consist of pipelines, canals, distribution systems, or other conduits provided and maintained with linings adequate in the Contracting Officer's judgment to prevent excessive conveyance losses.

. . .

(iii) The City shall not pump, or within its legal authority, permit others to pump ground water from within the exterior boundaries of the City's service area, which has been delineated on a map filed with the Contractor and approved by the Contractor and the Contracting Officer, for use outside of said service area unless such pumping is permitted under Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time, and the Contracting Officer, CAWCD, and the City shall agree, or shall have previously agreed, that a surplus of ground water exists and drainage is or was required; Provided, however, That such pumping may be approved by the Contracting Officer and CAWCD, and approval shall not be unreasonably withheld, if such pumping is in accord with the Colorado River Basin Project Act and upon submittal by the City of a written certification from the Arizona Department of Water Resources or its successor agency that the pumping and transportation of ground water is in accord with Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time.

(iv) The City shall not sell or otherwise dispose of or permit the sale or other disposition of Colorado River water or Assignment Water for use outside of Maricopa, Pinal, and Pima Counties; Provided, however, That this does not prohibit exchanges of Colorado River water and Assignment Water covered by separate agreements; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article

. . .

6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0063).

(j) (i) Colorado River water and Assignment Water scheduled for delivery in any year under this contract may be used by the City or resold or exchanged by the City pursuant to appropriate agreements approved by the Contracting Officer and CAWCD. If said water is resold or exchanged by the Contractor for an amount in excess of that which the City is obligated to pay under this Contract, the excess amount shall be paid forthwith by the City to CAWCD for application against the CAWCD's repayment obligation to the United States; Provided, however, That the Contractor shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to OM&R costs.

(ii) Colorado River water and Assignment Water scheduled for delivery in any year under this Contract that cannot be used, resold, or exchanged by the City may be made available by the Contracting Officer or the Operating Agency to other users. If such water is sold to or exchanged with other users, the City shall be relieved of its payments hereunder only to the extent of the amount paid to the Contracting Officer and the Operating Agency by such other users, but not to exceed the amount the City is obligated to pay under this Contract for said water.

(iii) In the event the City, the Contracting Officer, or the Operating Agency is unable to sell any portion of the Colorado River water or Assignment Water scheduled for delivery by the City but not required by the City in any year, the City

shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water as determined by the Contracting Officer or the Operating Agency.

(k) The City shall have the right to use Colorado River water and Assignment Water received under this Contract for any purpose consistent with Arizona law, including ground water recharge.

ARTICLE 6
Procedure for Ordering Water

6. At least six months prior to the delivery of Colorado River water and Assignment Water to the City under this Contract, the Contracting Officer or the Operating Agency shall issue a written notice of availability of such water to the City. The City will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer and the Operating Agency showing the quantities of (i) Colorado River water and (ii) Assignment Water requested for delivery. The City shall submit a schedule which requests the delivery of all Assignment Water available to it. If the first notice of availability of water is issued to the City by the Contracting Officer or the Operating Agency prior to June 1 of any year, the first schedule for the balance of said year shall be submitted to the Contracting Officer and the Operating Agency within 30 days after the City's receipt of such notice. If such notice is issued after June 1 of any year, the first schedule shall be submitted to the Contracting Officer and the Operating Agency within 30 days after the City's

receipt of such notice and shall cover the balance of such year and the next succeeding year. Thereafter, the amounts, times, and rates of delivery of water to the City during any year shall be in accordance with a water delivery schedule for that year, such schedule to be determined in the following manner:

(a) On or before June 1 of each year, the Contracting Officer shall announce (i) the amount of Colorado River water and (ii) the amount of Assignment Water available for delivery during the following year in a written notice to the Operating Agency and the City.

(b) On or before October 1 of each year, the City shall submit in writing to the Operating Agency and the Contracting Officer a water delivery schedule indicating the amounts of (i) Colorado River water and (ii) Assignment Water desired by the City during each month of the following year along with a preliminary schedule of water desired for the succeeding 2 years. The City shall schedule for delivery each year all Assignment Water available to it for delivery during that year.

(c) Upon receipt of such schedule, the Contracting Officer and the Operating Agency shall review it and, after consultation with the City, shall make only such modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to the City are consistent with the delivery capability of the project, considering, among other things, the availability of water and the delivery schedules of all subcontractors of Central Arizona Project water service; Provided, That

this provision shall not be construed to reduce annual deliveries to the City.

(d) On or before November 15 of each year, the Contracting Officer or the Operating Agency shall determine and furnish to the City the water delivery schedule for the next succeeding year which shall show the amounts of (i) Colorado River water and (ii) Assignment Water to be delivered to the City during each month of that year.

(e) The monthly water delivery schedules may be amended by the Contracting Officer or the Operating Agency upon the City's written request. Proposed amendments shall be submitted by the City within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer or the Operating Agency in like manner as the schedule itself.

(f) In no event shall the Contracting Officer or the Operating Agency be required to deliver in any one month (i) an amount of Colorado River water greater than eleven percent (11%) of the City's maximum annual entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment Water greater than eleven percent (11%) of the City's maximum annual entitlement to Assignment Water under Subarticle 5(b)(ii) or 5(b)(iii) of this Contract; Provided, however, That the Contracting Officer or the Operating Agency may deliver a greater percentage of such water in any month if such increased delivery is compatible with the overall delivery of Central Arizona Project water to CAP

subcontractors as determined by the Contracting Officer and the Operating Agency, and if the City agrees to accept such increased deliveries.

ARTICLE 7
Points of Delivery--Measurement and Responsibility for Distribution of Water

7. (a) All water to be furnished to the City pursuant to this Contract shall be delivered at turnouts to be constructed by the United States at such point(s) on the water supply system as may be agreed upon in writing by the Contracting Officer and CAWCD, after consultation with the City.

(b) Unless the United States and the City agree by contract to the contrary, the City shall construct and install, at its sole cost and expense, connection facilities required to take and convey such water from the turnouts to the City's service area. The City shall furnish, for approval of the Contracting Officer, drawings showing the construction to be performed by the Contractor within the water supply system right-of-way six months before starting said construction. The facilities may be installed, operated, and maintained on the water supply system right-of-way subject to such reasonable restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by the Contracting Officer.

(c) All water delivered to the City pursuant to this Contract shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or by the Operating Agency. Upon the request of the

City or the Operating Agency, the accuracy of such measurements shall be investigated by the Contracting Officer or by the Operating Agency and the City, and any errors which may be mutually determined to have occurred therein shall be adjusted; Provided, That in the event the parties cannot agree on the required adjustment, the Contracting Officer's determination shall be conclusive.

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

(e) In addition to the right of the United States under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce the amount of water to be delivered through the Central Arizona Project, the United States or the Operating Agency may, after consultation with the City, temporarily discontinue or reduce the quantity of water to be furnished to the City as herein provided for the purpose of investigation, inspection, maintenance, repair, or replacement of any CAP facilities or any part thereof necessary for the furnishing of water to the City under this Contract, but so far as feasible the United States or

the Operating Agency shall coordinate any such discontinuance or reduction with the City and shall give the City due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Neither the United States, its officers agents, and employees, nor the Operating Agency, its officers, agents, and employees, shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to the City of less water than what has been paid for in advance, the City shall be entitled to be reimbursed for the appropriate proportion of advance payments of OM&R charges prior to the date of the City's next payment of OM&R charges or the City may be given credit toward the next payment of OM&R charges if the City should so desire.

ARTICLE 8
Priority in Case of Shortage

8. (a) Subject to the provisions of Section 304(e) of the Colorado River Basin Project Act, in the event of a shortage of the water supplies available to the Central Arizona Project, as determined by the Contracting Officer after consultation with CAWCD, Assignment Water furnished to the City under this Contract shall be subject to reduction in the same manner and to the same extent as agricultural water under Central Arizona Project agricultural water service subcontracts.

. . .

(b) In a time of shortage, the City's entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract shall be determined by the following formula:

City's entitlement to Colorado River water in a time of shortage = $[(X+Y) \cdot (A+B)/(C+D)] - [(X/D) \cdot A]$*

Where

X = the City's entitlement to Central Arizona Project water for M&I water use under Article 4.12 of Contract No. 5-07-30-W0063, as the same may be amended or supplemented from time to time;

Y = 118 acre-feet;

A = the total amount of water available from the Central Arizona Project for non-Indian M&I water use (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein), as determined by the Contracting Officer in accordance with the method outlined in the Record of Decision of the Secretary published in the Federal Register on March 24, 1983;

B = the total amount of Colorado River water available to the Cities pursuant to this Contract with the City of Scottsdale and like contracts with the other Cities (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system);

C = 26,000 acre-feet.

. . .

D = the sum of all non-Indian municipal and industrial subcontractors' entitlements to Central Arizona Project water for M&I water use under Article 4.12 of all non-Indian CAP municipal and industrial subcontracts, as the same may be amended or supplemented from time to time;

* It is the intent of the parties that this calculation be performed in a manner which is consistent with the method of calculation exemplified in Tables 1 and 2 attached hereto as Exhibit "C".

(c) Notwithstanding the provisions of Subarticle 5(c) of this Contract, the City's entitlement to Colorado River water, as determined in accordance with the formula set forth in Subarticle 8(b) hereof, shall be made available to the City at the City's project turnout(s).

(d) In a time of shortage, any Colorado River water available from the 22,000 acre-feet to be obtained by the United States pursuant to Subarticle 5(a) hereof in excess of that necessary to satisfy the entitlement of the City under Subarticle 8(b) of this Contract and the entitlements of the other Cities under Subarticle 8(b) of like contracts with such Cities shall be made available by the Secretary for delivery to non-Indian CAP municipal and industrial subcontractors other than the Cities pursuant to the Central Arizona Project M&I water service subcontracts with such subcontractors, pro rata in proportion to each such subcontractor's entitlement to Central Arizona Project water for M&I use under such subcontractor's Central Arizona Project M&I water service subcontract. The manner in which this Subarticle 8(d) is intended to

operate is illustrated by Tables 1 and 2 attached hereto as Exhibit "C".

ARTICLE 9
Payments

9. (a) Subject to the provisions of Article 11 hereof, the City shall pay in advance for CAP OM&R costs estimated to be incurred by the United States or the Operating Agency in delivering Colorado River water and Assignment Water to the City pursuant to this Contract. At least 6 months prior to the first delivery of such water, or as soon thereafter as is practicable, the Contracting Officer or the Operating Agency shall furnish the City with an estimate of the City's share of OM&R costs to the end of the initial year of water delivery and an estimate of such costs for the following year. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer or the Operating Agency, but prior to the delivery of water, the City shall advance to the Contracting Officer or the Operating Agency its share of such estimated costs to the end of the initial month of water delivery and without further notice or demand shall on or before the first day of each succeeding month of the initial year of water delivery and the following year advance to the Contracting Officer or the Operating Agency in equal monthly installments the City's share of such estimated costs. Advances of monthly payments for each subsequent year shall be made by the City to the Contracting Officer or the Operating Agency on the basis of annual estimates to be furnished by the Contracting Officer or the Operating

Agency on or before June 1 preceding each said subsequent year, and the advances of payments for said estimated costs shall be due and payable in equal monthly payments on or before the first day of each month of the subsequent year. Differences between actual OM&R costs and estimated OM&R costs shall be adjusted in the next succeeding annual estimates; Provided, however, That if in the opinion of the Contracting Officer or the Operating Agency the amount of any annual OM&R estimate is likely to be insufficient to cover the above-mentioned costs during such period, the Contracting Officer or the Operating Agency may increase the annual estimate of the City's OM&R costs by written notice thereof to the City, and the City shall forthwith increase its remaining monthly payments in such year to the Contracting Officer or the Operating Agency by the amount necessary to cover the estimated insufficiency. All estimates of OM&R costs shall be accompanied by data and computations relied on by the Contracting Officer or the Operating Agency in determining the amounts of the estimated OM&R costs and shall be subject to joint review by the City and the Contracting Officer or the Operating Agency.

(b) Other than as provided for in Exhibit "B" hereto with respect to Assignment Water, the City shall not be required to pay any water service capital charge(s) with respect to Colorado River water or Assignment Water to which the City is entitled under this Contract.

. . .

. . .

(c) Payment of all OM&R charges becoming due hereunder prior to or on the dates stipulated in Subarticle 9(a) hereof is a condition precedent to receiving water under this Contract.

(d) All payments to be made to the Operating Agency or the United States under Subarticle 9(a) hereof shall be made by the City as such payments fall due from revenues legally available to the City for such payment from the sale of water to its water users and from any and all other sources which might be legally available; Provided, That no portion of the general taxing authority of the City, nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of this Contract, nor shall such sources be liable for any payments, contributions, or other costs pursuant to this Contract, or to satisfy any obligation hereunder unless duly and lawfully allocated and budgeted for such purpose by the City for the applicable budget year; and Provided, further, That no portion of this Contract shall ever be construed to create an obligation superior in lien to or on a parity with the Cities' revenue bonds now or hereafter issued. The City shall levy and impose such necessary water service charges and rates and use all the authority and resources available to it to collect all such necessary water service charges and rates in order that the City may meet its obligations hereunder and make in full all payments required under this Contract on or before the date such payments become due.

. . .

. . .

ARTICLE 10
Loss of Entitlement

10. The City shall have no right to delivery of Colorado River water or Assignment Water under this Contract during any period in which the City may be in arrears in the payment of any charges due the United States or the Operating Agency. The Contracting Officer or the Operating Agency may sell to another entity any water determined to be available under the City's entitlement for which payment is in arrears; Provided, however, That, except as provided to the contrary in Exhibit "B" hereto, the City may regain the right to use any unsold portion of the water determined to be available under the City's original entitlement upon (i) payment of all delinquent charges plus any difference between the contractual obligation and the price received in the sale of the water by the Contracting Officer or Operating Agency and (ii) payment of charges for the current period.

ARTICLE 11
Refusal to Accept Delivery

11. In the event the City fails or refuses in any year to accept delivery of the quantity of water available for delivery to and required to be scheduled by it pursuant to this Contract, or in the event the City in any year fails to submit a schedule for delivery as provided in Article 6 hereof, said failure or refusal shall not relieve the City of its obligation to make the payments required in this Contract.

. . .

. . .

ARTICLE 12
Charges for Delinquent Payments

12. (a) The City shall be subject to interest, administrative, and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the City shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the City shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the City shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the City shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

. . .

ARTICLE 13
Secretarial Control of Return Flow

13. (a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of CAWCD's service area as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for CAP use return flow which originates or results from water contracted for from the Central Arizona Project within the boundaries of CAWCD's service area if, in his judgment, such return flow is not being put to a beneficial use. The City may recapture and reuse or sell its return flow; Provided, however, That such return flow may not be sold for use outside Maricopa, Pinal, and Pima Counties; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0063). The City shall, at least 60 days in advance of any proposed sale of such water, furnish the following information in writing to the Contracting Officer and CAWCD:

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

(ii) The location and proposed use of the return flow.

(iii) The price to be charged for the return flow.

. . .

(b) The price charged for the return flow may cover the cost incurred by the City for Colorado River water and Assignment Water plus the cost required to make the return flow usable. If the price received for the return flow is greater than the costs incurred by the City, as described above, the excess amount shall be forthwith paid by the City to the CAWCD for application against CAWCD's repayment obligation to the United States. Costs required to make return flow usable shall include but not be limited to capital costs and OM&R costs including transportation, treatment, and distribution, and the portion thereof which may be retained by the City shall be subject to the advance approval of CAWCD and the Contracting Officer.

(c) Any return flow captured by the United States and determined by the Contracting Officer and CAWCD to be suitable and available for use by the City may be delivered by the United States or Operating Agency to the City as a part of the water supply for which the City has subcontracted pursuant to Contract No. 5-07-30-W0063, and such water shall be accounted and paid for pursuant to the provisions thereof.

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

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ARTICLE 14
Water and Air Pollution Control

14. The City, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

ARTICLE 15
Quality of Water

15. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. Neither the United States nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. The City waives its right to make a claim against the United States, the Operating Agency, or any subcontractor because of changes in water quality caused by the commingling of water to be delivered under this Contract with other water.

ARTICLE 16
Equal Opportunity

16. During the performance of this Contract, the City agrees as follows:

(a) The City will not discriminate against any employee or applicant for employment because of race, color, reli-

gion, sex, or national origin. The City will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The City agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The City will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The City will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising said labor union or workers' representative of the City's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

. . .

(d) The City will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The City will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the City's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the City may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The City will include the provisions of Subarticles 16(a) through 16(g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The City will take such action with respect to

any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the City becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 17
Compliance with Civil Rights Laws and Regulations

17. (a) The City shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the City agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

. . .

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

ARTICLE 18
Notices

18. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the City and CAWCD, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States and CAWCD, when mailed, postage prepaid, or delivered to the Manager of the City, 3939 Civic Center Plaza, Scottsdale, Arizona 85251, on behalf of the City and the United States, when mailed, postage prepaid, or delivered to the General Manager, Central Arizona Water Conservation District, 23636 North Seventh Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

. . .

ARTICLE 19
Assignment Limited--Successors and Assigns Obligated

19. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid unless and until approved in writing by the Contracting Officer and CAWCD.

ARTICLE 20
Officials Not to Benefit

20. No Member of or Delegate to Congress, Resident Commissioner, or official of the City shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

ARTICLE 21
Transfer of OM&R Responsibility to CAWCD; Project Repayment

21. (a) At or prior to the date that the United States transfers OM&R responsibility for project works associated with delivery of water to the Cities to CAWCD as the Operating Agency, the United States shall secure the agreement of CAWCD to perform the United States' obligations under this Contract to deliver water under this Contract through the transferred works.

(b) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract and any amendment or revision thereof, the costs associated with the delivery of water to the City under this Contract shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

ARTICLE 22
Repayment Contract Controlling

22. Pursuant to the Repayment Contract, the United States has agreed to construct and, in the absence of an approved Operating Agency, to operate and maintain the works of the Central Arizona Project and to deliver Central Arizona Project water to the various subcontractors within CAWCD's service area; and CAWCD has obligated itself for the payment of various costs, expenses, and other amounts allocated to CAWCD pursuant to Article 9 of the Repayment Contract. The City expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this Contract No. 9-07-30-W0237 the day and year first above-written.

THE UNITED STATES OF AMERICA

By _____

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Attest: _____ By _____
Secretary President

. . .

. . .

. . .

CITY OF SCOTTSDALE, ARIZONA

Attest: _____ By _____
Clerk Mayor

Approved
as to Form: Barbara R Goldberg for
City Attorney

Exhibit "A"

CAP Master Repayment Contract

DUPLICATE-ORIGINAL

Contract No. 14-06-W-245
Amendment No. 1
B.C. Draft 11/28/88

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

1. PARTIES

The parties to this contract, executed as of this first day of December, 1988, are the United States of America, acting through the Department of the Interior, and the Central Arizona Water Conservation District, a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona.

2. AUTHORITIES

This contract is made pursuant to the:

2.1 Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto.

2.2 Boulder Canyon Project Act, approved December 21, 1928, 45 Stat. 1057, a supplement to the Federal Reclamation Laws.

2.3 Reclamation Project Act of 1939, approved August 4, 1939, 53 Stat. 1187, as amended.

2.4 Colorado River Basin Project Act, approved September 30, 1968, 82 Stat. 885, as amended, a supplement to the Federal Reclamation Laws.

2.5 Arizona Revised Statutes, Section 48-3701 et seq.

3. RECITALS

3.1 The Colorado River Basin Project Act provides, among other things, that for the purposes of furnishing irrigation water and municipal and industrial water supplies to water-deficient areas in 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, consisting of the principal works hereinafter described in Article 6.3.

3.2 Pursuant to the provisions of Arizona Revised Statutes, Section 48-3701 et seq., the Central Arizona Water Conservation District 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, Section 48-3701 et seq.

3.3 On December 15, 1972, the United States and the Contractor entered into a contract entitled "Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), whereby, among other things, the United States agreed to construct the Central Arizona Project and the Contractor agreed to repay the costs of the project properly allocable to the Contractor.

3.4 Subarticle 9.3(b) of said contract provides that the Contractor's repayment obligation shall not exceed $1.2 billion.

3.5 Subarticle 9.3(b) of said contract also provides that if the

Contractor's repayment obligation will exceed $1.2 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation.

3.6 Both parties acknowledge that the Contractor's repayment obligation will exceed $1.2 billion, and have agreed to increase the Contractor's repayment ceiling to a level sufficient to facilitate completion of the project.

4. ARTICLES OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is agreed by and between the parties hereto as follows:

5. DEFINITIONS

When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the terms:

5.1 "Federal Reclamation Laws" or "Reclamation Laws" shall mean the Act of June 17, 1902, 32 Stat. 388, and all acts amendatory thereof or supplementary thereto.

5.2 "Basin Project Act" shall mean the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, as amended, which is a supplement to the Federal Reclamation Laws.

5.3 "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

5.4 "Contracting Officer" shall mean the Secretary or his authorized designee acting in his behalf.

5.5 "Contractor" shall mean the Central Arizona Water

Conservation District, organized pursuant to Arizona Revised Statutes, Section 48-3701 et seq.

5.6 "Service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties of Arizona and such other counties as may hereafter become part of the District, exclusive of any Indian reservation land lying wholly or partly within said Counties.

5.7 "Subcontractor" shall mean any irrigation district, municipality, individual, or any entity which enters into a water service subcontract with the United States and the Contractor in furtherance of the provisions of the Basin Project Act.

5.8 "Central Arizona Project" or "project" shall mean the project and works authorized by Section 301(a) of the Basin Project Act and constructed by the United States pursuant to the provisions of said Act and this contract.

5.9 "Project works" shall mean the principal works described in Section 301(a) of the Basin Project Act, and appurtenances thereto, or as modified pursuant to Article 6.4 hereof, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

5.10 "Water supply system" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt Gila and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

5.11 "Distribution works" shall mean those facilities constructed or financed by the United States under the authorization in Section 309(b) of the Basin Project Act for the primary purpose of

distributing the project water supply within the service area after said project water supply has been transported or delivered through the water supply system.

5.12 "Agricultural water" or "irrigation water" shall mean project water used primarily in the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than 5 acres.

5.13 "Miscellaneous water" shall mean water delivered from the project, or by exchange for project water, for recreational and fish and wildlife purposes at other than project facilities and shall have a lesser priority of use than agricultural water.

5.14 "Municipal and industrial water," herein referred to as "M&I water," shall mean project water other than agricultural or miscellaneous water delivered by means of the project works.

5.15 "Lands not having a recent irrigation history" shall mean, except where otherwise determined by the Secretary for efficiency of subcontractor's operation, lands which the Secretary determines were not irrigated during the period September 30, 1958, to September 30, 1968.

5.16 "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

5.17 "Exchange water" shall mean Colorado River water made available in exchange for or in replacement of existing supplies from surface sources other than the mainstream of the Colorado River.

5.18 "Transferred works" shall mean such facilities of the water supply system or of other construction stages as to which OM&R

responsibility is transferred from the United States to the Operating Agency.

5.19 "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

5.20 "Transfer notice" shall mean a written notice or notices, numbered consecutively, which the Contracting Officer transmits to the Operating Agency and which shall designate:

(a) the transferred works;

(b) items of equipment and supplies transferred to the Operating Agency; and

(c) the date upon which such transfer will be effected.

5.21 "Gila River system waters" shall mean waters of the Gila River and tributaries thereof east of the Yuma-Maricopa County line.

5.22 "Notice of completion" shall mean the notice which the Contracting Officer issues to Contractor to announce the substantial completion of a construction stage. Each such notice of completion shall include the estimated amount of the repayment obligation for the construction stage to which the notice pertains, the date of initiation of repayment for the construction stage and indicate the amount and due date for the first payment for the construction stage.

5.23 "Development Fund" shall mean the separate fund, known as the Lower Colorado River Basin Development Fund, established in the Treasury of the United States pursuant to Section 403(a) of the Basin Project Act.

5.24 "Year" shall mean the period January 1 through the next

succeeding December 31.

5.25 "Contractor's Construction Cost Repayment Obligation," hereinafter referred to as "repayment obligation," shall mean the total amount of all construction costs including related construction claims and interest thereon, OM&R costs during construction, and interest on costs allocated to the M&I water and power functions during construction, of the Central Arizona Project, incurred therefor and as determined by the United States and further described in Article 6.2 hereof, excluding reimbursable costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors, and which is determined by the Secretary, after consultation with the Contractor, to be allocable to and repayable by the Contractor in accordance with the provisions of the Basin Project Act and this contract.

5.26 "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from water contracted for from the Central Arizona Project, but shall not include any water delivered through the project works for ground water recharge purposes.

5.27 "Project water" shall mean (a) all water allocated by the Secretary for project purposes by Federal Register notice dated March 24, 1983, and any subsequent reallocation by the Secretary as contemplated in paragraph 6 of said Federal Register notice, which water is available pursuant to contracts with the Secretary from: (1) the Colorado River; (2) Central Arizona Project dams and reservoirs; and (3) return flows captured by the Secretary for project use; (b) any water

delivered to entities in Arizona, through the project works, as a replacement supply for Cliff Dam; (c) water delivered to water users in Arizona, through the project works, in exchange for water delivered to users in New Mexico from or by means of the project works; and (d) any additional water not included in (a) above, that is required to be delivered by the Secretary through the project, pursuant to the Ak-Chin Water Rights Settlement Act of 1978 (Public Law 95-328), as amended on October 19, 1984 (Public Law 98-530); the Southern Arizona Water Rights Settlement Act of October 12, 1982 (Title III of Public Law 97-293); and, subject to the execution of a settlement agreement by the Contractor providing for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community and to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (Public Law 100-512), up to 22,000 acre-feet annually of Colorado River water to be delivered through the project works in accordance with said settlement agreement and legislation.

5.28 "Indian lands" shall mean the lands within any Indian reservation for which an allocation of project water has or will be made by the Secretary for delivery through project works.

5.29 "Navajo Project" shall mean the interests of the United States in the Navajo Generating Station and the Transmission System, or any replacement thereof, as authorized by Section 303 of the Basin Project Act and as described in contracts entered into pursuant to that Act.

5.30 "Construction stage" shall mean any one of the following: (1) the water supply system; (2) New Waddell and Modified Roosevelt Dams; (3) replacement features or programs for Cliff Dam; (4) Tucson terminal storage; (5) Hooker Dam or suitable alternative; and (6) Buttes Dam.

5.31 "Plan 6" shall mean Plan 6 for the Regulatory Storage Division of the Central Arizona Project as approved by Record of Decision of the Secretary dated April 3, 1984 as amended and supplemented by Records of Decision of the Secretary dated May 20, 1986 (Supplement One) and June 17, 1988 (Supplement Two).

5.32 "Allocable cost" shall mean (a) with respect to the project, the total project cost less (1) the cost of non-Indian distribution works, (2) the cost of the safety of dams component of Plan 6, (3) the cost of Indian distribution systems, (4) the cost of the Colorado River Division and the New Mexico fish hatchery, (5) the cost of cultural resources studies, (6) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (7) the costs of Charleston Dam and San Pedro Aqueduct, (8) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (9) such other costs as determined appropriate by the Contracting Officer; and (b) with respect to each construction stage, the total cost of such stage less that portion of the following costs associated with such stage: (1) the cost of the safety of dams component of Plan 6, (2) the cost of cultural resources studies, (3) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (4) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (5) such other costs as determined appropriate by the Contracting Officer.

5.33 "OM&R Transfer Contract" shall mean the August 5, 1987, contract entitled "Contract Between the United States of America and the

Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities" (Contract No. 7-07-30-W0167), and any amendment or revision thereof.

5.34 "Overall repayment period" shall mean the period of time beginning with initiation of repayment of the first construction stage and ending with final payment of the last construction stage.

5.35 "Plan 6 Funding Agreement" shall mean the April 15, 1986, agreement entitled "Agreement Among the United States, the Central Arizona Water Conservation District, the Flood Control District of Maricopa County, the Salt River Agricultural Improvement and Power District and Salt River Valley Water Users' Association, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, the State of Arizona, and the City of Tucson for Funding of Plan Six Facilities of the Central Arizona Project, Arizona, and for other Purposes," as it may be supplemented or amended.

5.36 "Permanent service" shall mean that water supply service commencing in the year following substantial completion of the water supply system and continuing in perpetuity.

5.37 "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be amended or revised.

5.38 "Project power" shall mean the United States' entitlement to capacity and energy from the Navajo Project.

6. PROJECT CONSTRUCTION

6.1 Agreement of the United States. Subject to the terms and

conditions of this contract and within the limits of the funds made available therefor by Congress, the United States will expend toward the construction of the project, exclusive of interest costs during construction, $832,180,000 based on 1967 cost estimates, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein, or so much of such amount, as in the opinion of the Secretary, is necessary to construct said project, whichever amount is the lesser. The aforementioned amount includes the United States' costs of participation in the Navajo Project.

6.2 Costs of Project.

(a) The estimated construction cost of $832,180,000 for the project, based upon 1967 prices, has been determined as follows:

	$ 1,000's
Main System	
Granite Reef Division	407,740
Orme Division	42,340
Salt-Gila Division	47,170
Tucson Aqueduct (Colorado River source)	46,300
Buttes Dam	35,240
Navajo Project	106,000
Subtotal	684,790
Other Separate Features	
Hooker Dam or suitable alternative	31,730
Charleston Dam and San Pedro Aqueduct (San Pedro River source)	36,420
Subtotal	68,150
Miscellaneous Features	
*Gila River Division	5,250
Indian Distribution System	19,970
Colorado River Division	42,450
Drainage System	11,570
Subtotal	79,240
Total Project	$832,180

*Note: Fish hatchery costs, some of which may be located on the Colorado River.

Provided, however, That (i) the adjustment provisions of Article 6.1 apply

to the total construction costs of the project and not to the costs of the individual line items set out in this Subarticle 6.2(a), and (ii) in accordance with provisions of Article 6.4 herein, the references to the individual line items set out in this Subarticle 6.2(a) are not to be deemed a determination that each of the features referred to in the individual line items will be constructed or that costs will be incurred for each of said individual line items based upon a percentage which the estimated costs for each individual line item bears to the project's total estimated construction costs.

(b) The Central Arizona Project costs incurred by the United States which are to be repaid by Contractor shall include the share allocated to the Contractor of (i) construction costs of the project, (ii) all expenses of whatsoever kind or nature heretofore or hereafter incurred by the United States in connection with, growing out of, or resulting from the construction, and (iii) the OM&R during construction of project works. The aforementioned share of allocated costs shall also include, but shall not be limited to, interest during construction on costs allocated to the M&I water and power functions, the cost of labor, materials, equipment, engineering, legal services, surveys, investigations, property, superintendence, administration, overhead, general expenses, special services, damages of all kinds and character, inspection, repair, and protection of project works and water supply, and the costs of all lands, interests in lands, and rights-of-way acquired by the United States for the project, all as determined by the Secretary.

6.3 Principal Works of the Project. The works and facilities to be constructed under this contract shall consist of the following principal

works:

(a) A system of main conduits and canals, including the Havasu Pumping Plant and a main canal and pumping plants (Granite Reef Aqueduct and pumping plants), for diverting and carrying water from Lake Havasu to the confluence of the Salt and Verde Rivers, which system will have a capacity of 3,000 cubic feet per second;

(b) Salt-Gila Aqueduct and pumping plant;

(c) Tucson Aqueduct and pumping plants;

(d) New Waddell and Modified Roosevelt Dams;

(e) replacement features or programs for Cliff Dam;

(f) Tucson Terminal Storage (if approved by the Secretary);

(g) Buttes Dam and Reservoir;

(h) Hooker Dam and Reservoir or suitable alternative which shall be constructed in such manner as to give effect to the provisions of Section 304(f) of the Basin Project Act;

(i) Charleston Dam and Reservoir and the San Pedro Aqueduct;

(j) related canals, regulating facilities, and electric transmission facilities required for the operation of said principal works;

(k) related water distribution and drainage works; and

(l) appurtenant works.

No works or facilities for the treatment of water are included in the project works to be constructed by the United States. Nothing contained herein shall be construed to indicate the order in which the aforedescribed works will be constructed.

6.4 Changes in Project Works. Should the Secretary, either before or during construction, determine it to be in the best interests of

the project, he may, upon the completion of the studies currently being made or to be made, including land classifications, hydrological, engineering, geological, sedimentation, water supply, and repayment ability, and after consultation with the Contractor, change the location, size, or capacity of any of the project works, or may eliminate works, or add works to those described above, and the Secretary's decision on such changes, eliminations, and additions shall be conclusive.

6.5 Construction Conditions. The United States shall be under no obligation to commence or, having commenced, to continue construction of project works until transfer from the State of Arizona of such State-owned lands or interests therein, in a form acceptable to the Attorney General of the United States, as the Secretary determines is necessary in the construction, operation, or maintenance of the project.

6.6 Annual Work Program. During construction of the project works the Contracting Officer will consult with the Contractor and/or with any subcontractor through or within whose service area project works are to be constructed to achieve maximum coordination between such construction program and the annual programs of any affected subcontractor. Within 30 days following the enactment by Congress and Presidential approval of annual or supplementary appropriation acts and the allotment of funds thereunder for continued construction of the project, the United States will furnish the Contractor with a notice and statement showing the proposed construction program for the balance of the current fiscal year and for the following fiscal year or years. If so requested in writing by the Contractor within 30 days of its receipt of such notice, the Secretary will consult with the Contractor and/or the affected subcontractor with respect

to the proposed program. The action of the Contracting Officer concerning the program after such consultation shall be final.

6.7 Inability of the United States to Complete Project on Basis of Cost Estimates. If construction of the project works shall have been commenced but, prior to completion, the Secretary determines that the cost of constructing the project will exceed the maximum amount to be expended therefor by the United States as provided for in Article 6.1 hereof, the Secretary may after consultation with the Contractor terminate construction and declare the obligations of the United States hereunder with regard to completion of construction of the project to have been fulfilled. If appropriations for the continuance and/or completion of construction in amounts sufficient in the opinion of the Secretary to complete said construction are authorized by Congress and are available, the Secretary shall consult with the Contractor and shall make continuation of construction contingent upon the execution of an amendatory contract with the Contractor wherein the Contractor's maximum repayment obligation is increased so as to cover the increased reimbursable costs as determined by the Secretary; Provided, however, That the Contractor shall not utilize any part of the completed or unfinished project facilities in the absence of written agreement with the Secretary for reimbursement therefor.

7. PROJECT OPERATION, MAINTENANCE, AND REPLACEMENT

7.1 Operation and Maintenance and Water Deliveries by the United States Prior to Completion of Construction. Except as provided in the OM&R Transfer Contract, prior to completion of project works by the United States, as determined and announced to the Contractor in writing by the Secretary, the United States will operate and maintain said project

facilities. The cost of said OM&R allocated to the Contractor shall be included in the Contractor's repayment obligation; Provided, however, That said OM&R cost shall not be included with the project cost ceiling set out in Article 6.1 hereof. During the aforesaid period, project water, if available, may be disposed of by the Secretary at charges which the Secretary determines to be appropriate; Provided, however, That to the extent deemed feasible by the Secretary, preference will be given to subcontractors and Indian lands. Payment for water shall be made in advance by the water user. The places of measurement and delivery of said water shall be established by the Secretary after consultation with the Contractor. Except as provided in the OM&R Transfer Contract, the proceeds accruing from the disposal of such water shall be credited to the Development Fund and applied toward the costs of the project as determined by the Secretary.

7.2 Operation and Maintenance and Water Deliveries after Completion of Construction. Except as provided in the OM&R Transfer Contract and any future agreements for the transfer of OM&R of the project works or portions thereof, upon completion of construction of a construction stage or upon completion of construction of the project, the United States shall operate and maintain such construction stage or the project and shall make project water available to project water users.

8. DELIVERY OF WATER

8.1 Obligation of United States. Subject to the terms, conditions, and provisions set forth herein, the United States will deliver project water to Contractor and, during such periods as it operates and maintains the water supply system, the United States will also transport and

deliver said water to the subcontractors. After transfer of OM&R the United States will make deliveries of Colorado River water to the Operating Agency; deliveries of other project waters will be made pursuant to determinations made by the Secretary.

8.2 Term of Contract. Subject to the terms, conditions, and provisions set forth herein, this contract is for permanent service.

8.3 Conditions Relating to Delivery.

(a) The obligation of the United States to deliver water under this contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, dated September 30, 1968, 82 Stat. 885; the contract between the United States and the State of Arizona, dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of Arizona v. California et al., 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, as now issued or hereafter modified.

(ii) Executive A, Seventy-eighth Congress, Second Session, a treaty between the United States of

America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the water of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty.

(iii) The express understanding and agreement by the Contractor that this contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and the Contractor shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam,

Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to Contractor hereunder.

(iv) The right of the United States temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works whatsoever affecting, utilized or, in the opinion of the Secretary, necessary for delivery of water hereunder, it being understood that so far as feasible the United States will (1) do so during periods of low water demands and (2) give reasonable notice in advance of such temporary discontinuance or reduction.

(b) Delivery of Colorado River water by the United States under this contract shall be charged to the State of Arizona's apportionment under the aforementioned Supreme Court Decree of March 9, 1964, in Arizona v. California and will discharge to that extent the obligation of the United States to deliver water under the aforementioned contract between the United States and the State of Arizona, dated February 9, 1944.

8.4 Delivery Points. Colorado River water to be furnished to the Contractor pursuant to this contract will be delivered by the United States in the Colorado River at the point of diversion from Lake Havasu where the intake structures of the Havasu Pumping Plant are

constructed. Agua Fria and Upper Gila River system waters will be delivered to the Contractor at New Waddell and Buttes Dams, respectively. Delivery points for other project water supplies and for return flows will be determined by the Contracting Officer after consultation with the Contractor and/or the affected subcontractor therefor.

8.5 Measurement.

(a) The quantity of Colorado River water pumped from Lake Havasu for the project shall be measured by means of measuring devices to be installed as part of the project works. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available, estimate the amount of water delivered to the Contractor.

(b) Deliveries of project water to the various subcontractors shall be measured by means of measuring devices to be installed as part of the project works at the points along the various aqueducts at which such water may be diverted for each of said subcontractors, and/or at the points in the various reservoirs formed by the dams constructed as part of the project works at which such water may be diverted for subcontractors and/or at the points where return flow may be delivered. These points of measurement will be established by the Secretary after consultation with Contractor and the affected subcontractor. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available and after consultation with the Contractor and the affected subcontractor, estimate the amount of water delivered to each such subcontractor. The Secretary shall at all times have access over any lands

and rights-of-way of a subcontractor for the purpose of inspecting and checking said measuring devices.

8.6 Responsibility for Distribution of Water after Leaving Water Supply System. Whether or not the United States operates and maintains the project facilities, the United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water after said water has been diverted from the water supply system. At such time as the Operating Agency assumes responsibility for the OM&R of project works, the responsibility for diversion, carriage, and transportation of the water through the water supply system shall be the sole responsibility of the Operating Agency. Responsibility for distribution of water beyond the water supply system shall be that of the subcontractors to whom said water is delivered from the water supply system. The United States, its officers, agents, and employees, shall not be liable for damage or claim of damage of any nature whatsoever for which there is legal responsibility arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water, and each subcontractor shall hold the United States, its officers, agents, and employees, harmless from any and all such claims.

8.7 Quantity of Water to be Delivered.

(a) The Secretary reserves the right to determine that quantity of Colorado River water to be released each year from Lake Mead for use by the Central Arizona Project pursuant to applicable law, which shall include the quantity of water which may be allocated by the Secretary for use on Indian lands.

(b) The quantity of Colorado River water available under

this contract for project purposes shall not exceed the quantity of water available to Arizona under the aforementioned Supreme Court Decree in Arizona v. California and in Arizona's water delivery contract with the United States after first providing for satisfaction of:

(i) present perfected rights and perfected rights described in Article II(D) of the Decree and the rights of other Federal reservations established prior to September 30, 1968; Provided, however, That the quantities of Colorado River water reserved to satisfy the aforesaid rights shall not, except as provided in said Decree, be reduced under any circumstances or for any reason whatsoever including, without limitation, a temporary use permitted by the Secretary by other water users in Arizona, California, or Nevada, of water reserved pursuant to the foregoing but not needed during any calendar year; And provided further, That no rights to the recurrent use of such water shall accrue by reason of said temporary use; and

(ii) the quantities of water provided for in all water delivery contracts between the United States and water users in Arizona as of September 30, 1968.

(c) The quantity of Colorado River water available under this contract for project purposes, including water for use on Indian lands

shall have the same priority as to delivery as the quantities of Colorado River water delivered pursuant to water delivery contracts, Federal reservations of water, and other arrangements between the United States and water users in Arizona entered into subsequent to September 30, 1968, for use of Colorado River water on Federal, State or privately owned lands in Arizona in total quantities not to exceed 164,652 acre-feet of diversions per year; Provided, however, That the Contractor shall hold the United States, its officers, agents, employees, and successors or assigns, harmless as to any and all claims for damages to persons or to property direct or indirect and of whatever nature, arising out of or which may in any manner be connected with the operation and/or effect of this Subarticle.

(d) The limitation on contracting in Subarticle 8.7(c) above shall not apply to contracts with holders of present perfected rights to Colorado River water in Arizona or to the Secretary's order of November 24, 1982, reserving Colorado River water for the Cibola National Wildlife Refuge. Nothing in Subarticle 8.7(c) shall restrict the right of the Secretary under water service contracts referred to in said Subarticle to terminate and/or reduce any entity's entitlement to Colorado River water and to make that entitlement available to other water users in Arizona.

(e) During any year when the subcontractors cannot use any portion of their entitlement to project water, and such water cannot be resold or exchanged in accordance with the terms and conditions of the water service subcontracts, the Contractor shall have the right in its discretion to resell any or all of such water or to use any or all of such water for ground water recharge purposes, including the subsequent recovery and resale

of such water, subject to Federal law, including but not limited to the Reclamation Reform Act of 1982, State of Arizona law, and such rules and regulations as the Secretary may deem appropriate. Subject to the terms and conditions of water service subcontracts, the water orders of all subcontractors shall be met before any project water is made available to the Contractor under this provision.

8.8 Subcontracts.

(a) The United States shall be a party to subcontracts.

(b) The Secretary and the Contractor shall require in each subcontract that:

(i) unless and until otherwise provided by Congress, water from the Central Arizona Project shall not be made available directly or indirectly for the irrigation of lands not having a recent irrigation history, as determined by the Secretary, except in the case of Indian lands, national wildlife refuges, and, with the approval of the Secretary, State-administered wildlife management areas;

(ii) there be in effect measures, adequate in the judgment of the Secretary and the Contractor, to control expansion of irrigation from aquifers affected by irrigation in the Contractor's service area and to reduce pumping of ground water in the agricultural subcontractors' service areas by the amount of project water received by said agricultural subcontractors;

(iii) the canals and distribution systems through which water is conveyed after its delivery to the subcontractors shall be provided and maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses;

(iv) neither the Secretary, the Contractor nor any subcontractor shall pump or permit others to pump ground water from within the exterior boundaries of the service area of a subcontractor receiving water from the Central Arizona Project for any use outside of said subcontractor's service area unless the Secretary, the Contractor, and such subcontractor shall agree, or shall have previously agreed, that a surplus of ground water exists and that drainage is or was required;

(v) except as otherwise agreed by the Contracting Officer, neither the Contractor nor any subcontractor shall sell or otherwise dispose of or permit the sale or other disposition of any project water, including return flows, for use outside the Contractor's service area;

(vi) irrigation water made available thereunder may be made available by the Secretary for M&I purposes if and to the extent that such water is no longer required by the subcontractor for irrigation purposes and shall be made available in all cases

where lands receiving project water have been converted to municipal and industrial use; Provided, however, That subcontracts effectuating such transfers are subject to the approval of the Secretary and the Contractor, which approval shall not be withheld unreasonably; And provided further, That it shall be deemed unreasonable for the Secretary or the Contractor to withhold such approval on the basis that the right to convert from irrigation to M&I use for a specific development could better be exercised in some other subcontractor's service area. The water so converted from irrigation to M&I purposes will be delivered with the same priority and at the same rate per acre-foot as other M&I water. Likewise, subcontracts for furnishing water for M&I purposes, including, but not limited to, ground water recharge to the extent ground water recharge is consistent with Arizona law, shall provide that, if water to be delivered thereunder is not presently required for such purposes, such water may be made available by the Secretary to other users; Provided, further, That the subcontractor shall be relieved of its payment obligation under its subcontract only to the extent of the amount paid by such other users;

(vii) the acreage limitation provisions of Reclamation Laws shall apply solely to agricultural water service;

(viii) except as specifically provided therein, it shall be the provisions of this contract which shall be controlling in the event of any inconsistency between this contract and any subcontract;

(ix) the subcontractor shall levy all necessary assessments, tolls, and other charges and shall use all of the authority and resources available to the subcontractor to collect the same in order that the subcontractor may meet its obligations thereunder to make in full all payments required under said subcontract on or before the date such payments become due and to meet other obligations under the subcontracts;

(x) the subcontractor establish, maintain, and provide the United States and the Contractor with land, water use, and crop census records.

8.9 Shortages. As provided in Section 301(b) of the Basin Project Act, Article II(B)(3) of the Decree of the Supreme Court of the United States in Arizona v. California, 376 U.S. 340, dated March 9, 1964, shall be so administered that in any year in which, as determined by the Secretary, there is insufficient mainstream Colorado River water available for release to satisfy the annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada, diversions from the mainstream of the

Colorado River for the Central Arizona Project and for other uses in Arizona under contracts or other agreements with the United States executed subsequent to September 30, 1968, shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under contracts existing as of September 30, 1968, with the United States by diversion works heretofore constructed, and by other Federal reservations in California of 4,400,000 acre-feet of Colorado River water, and by users of the same character in Arizona and Nevada. Water users in the State of Nevada shall not be required to bear shortages in any proportion greater than would have been imposed in the absence of said Section 301(b), nor shall said Section affect the relative priorities, among themselves, of water users in Arizona, California, and Nevada which are senior to diversions for the Central Arizona Project, or amend any provisions of said Decree. The aforesaid limitation stated in Section 301(b) shall not apply so long as the Secretary shall determine and proclaim that means are available and in operation which augment the water supply of the Colorado River system in such quantity as to make sufficient Colorado River mainstream water available for release to satisfy annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada.

8.10 Rate of Diversions of Colorado River Water. Subject to (a) the first proviso in Section 301(a) of the Basin Project Act, (b) the provisions of Subarticle 10.6(b) hereof, and (c) the provisions of Subarticle 8.7(a) hereof, any capacity in the Granite Reef Aqueduct in excess of 2,500 cubic feet per second may be utilized in the operations of

the project so as to maximize project benefits; Provided, however, That the use of such capacity shall not result in the annual diversion of a quantity of water in excess of the project's legal entitlement under the Basin Project Act.

8.11 Priority in Case of Shortage.

(a) Subject to the provisions of Section 304(e) of the Basin Project Act and the Secretary's allocation decisions published in the Federal Register on December 10, 1980, and March 24, 1983, any project water as defined in Subarticle 5.27(a) hereof, furnished through project facilities shall, in the event of shortages thereof, be reduced pro rata until exhausted, first for miscellaneous uses and next for agricultural uses, before such project water furnished for M&I uses is reduced. Thereafter, such project water for M&I uses will be reduced pro rata among all M&I water users. Each subcontract or other water delivery arrangement entered into pursuant to this contract shall so provide. This article shall not apply to Indian uses; Provided, however, That the relative priorities between Indian and non-Indian uses shall be as determined by the Secretary. Notwithstanding the provisions of this Subarticle, project water made available as a result of construction and operation of modifications to Roosevelt Dam as part of Plan 6 shall be distributed as provided in the Plan 6 Funding Agreement, and shall not be subject to reduction in the event of shortages of other project water supplies.

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

8.12 No Guarantee of Availability of Water. The United States

assumes no responsibility with respect to the quantity of water available for delivery pursuant to this contract. In no event shall the United States, its officers, agents, or employees, be liable for any damages, direct or indirect, of whatsoever nature, arising out of or in any way connected with any suspension or reduction in the delivery of water pursuant to this contract or with any shortage in the quantity of water available for delivery hereunder or to any subcontractor for any cause whatsoever including, but not limited to, drought, delay in the construction of the Navajo Project, the failure of the Navajo Project to be completed, or the lack of power for pumping.

8.13 Secretarial Control of Return Flow.

(a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of the Contractor as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for project use return flows within the boundaries of Contractor if in his judgment such return flow is not being put to a beneficial use. Any subcontractor may sell its return flow; Provided, however, That except as otherwise agreed by the Contracting Officer, such return flow may not be sold for use outside the Contractor's exterior boundaries; And provided further, That if the price received for such return flow is higher than the price paid for such project water, the amount of the excess price shall be paid by such subcontractor to the Contractor for application against the Contractor's repayment obligation to the United States.

(b) Any return flow captured by the United States and determined by the Secretary to be suitable and available for use on lands

within the service area and/or by any subcontractor therein may be delivered by the United States to a subcontractor as a part of the water supply for which the subcontractor contracts hereunder and such water shall be accounted and paid for pursuant to the provisions hereof.

8.14 Water and Air Pollution Control. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

8.15 Quality of Water. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of project water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer or the Operating Agency. Neither the United States nor the Operating Agency warrants the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

8.16 Exchange Water. Where the Secretary determines that a subcontractor is physically able to receive Colorado River mainstream water in exchange for or in replacement of existing supplies of surface water from sources other than the Colorado River to provide water supplies for users upstream from New Waddell, Modified Roosevelt and Buttes Dams, the Secretary may require that said subcontractor agree to accept said mainstream water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act.

8.17 Rights Reserved to the United States to Have Water Carried by Project Facilities. As a condition to the construction of project facilities and the delivery of water hereunder, the Contractor agrees that all project facilities will be available for the diversion, transportation, and carriage of water for Indian and non-Indian uses pursuant to arrangements or contracts therefor entered into on their behalf with the Secretary. In the event the responsibility for the OM&R of project facilities is transferred to and assumed by the Operating Agency, such transfer shall be subject to the condition that the Operating Agency shall divert, transport, and carry such water for such uses pursuant to the provisions of the aforesaid arrangements or contracts; Provided, however, That the aforesaid arrangements or contracts will include provisions for the payment of applicable construction costs and OM&R costs in accordance with Articles 9.3 and 9.6 of this contract.

8.18 Wheeling Non-Project Water. After taking into consideration the water delivery requirements of contracts for project water service and subject to availability of project capacity, non-project water may be wheeled through project facilities pursuant to wheeling agreements between the Contractor and the entity desiring to use project facilities for wheeling purposes. All such agreements shall be subject to the approval of the Contracting Officer who shall consider, among other things, the impact that the wheeling of such non-project water will have on the quality of project water. The Contractor and the Contracting Officer shall jointly develop a standard form of wheeling agreement including the rate structure for wheeling non-project water. All wheeling charges shall be paid to the Contractor by the entity contracting for the wheeling of non-project water.

The Contractor shall be entitled to retain revenues from wheeling charges sufficient to cover all OM&R costs associated with wheeling such non-project water, plus an administrative charge to be jointly determined by the Contractor and the Contracting Officer. All revenues from wheeling charges in excess of the OM&R costs and administrative charges shall be remitted by the Contractor to the Contracting Officer and deposited into the Development Fund.

8.19 Use of Project Power to Wheel Non-Project Water. If the energy requirements necessary for the pumping of project water are met and subject to the requirements of the Navajo Power Marketing Plan published in the Federal Register on December 21, 1987, project power may be used to wheel non-project water through project facilities under such conditions of use, including amounts, times of use, losses, costs, and other conditions as are established by the Contractor and approved by the Contracting Officer.

9. PAYMENT OF PROJECT COSTS ALLOCATED TO CONTRACTOR

9.1 Allocation of Construction Costs.

(a) Upon completion of each construction stage, the Contracting Officer will allocate costs to the various project purposes using the separable costs-remaining benefits procedure.

(b) For repayment purposes the reimbursable cost allocated to irrigation and M&I water by the separable costs-remaining benefits procedure will be combined and will hereinafter be termed the "water supply allocation." Upon completion of each construction stage, and at the periodic intervals specified in Subarticle 9.3(d), suballocation of the water supply allocation will be made to the irrigation and M&I water functions proportional to the water estimated to be used for each purpose

during the repayment period of each construction stage. The cost thus suballocated to the irrigation function will hereinafter be termed the "interest-free allocation." The cost thus suballocated to the M&I water function shall be added to the cost allocated to the commercial power function, plus interest during construction for both, and the sum will hereinafter be termed the "interest-bearing allocation."

(c) During construction, simple interest at the rate of 3.342 percent per annum shall be charged on costs allocated to the interest-bearing function as adjusted by the Secretary (i.e., net disbursements reduced by contract holdbacks, revenues applied to construction cost, and nonreimbursable expenses financed from construction funds). The total amount of all interest thus accumulated through the construction period prior to the date of completion of each construction stage shall be added to and become part of the actual construction cost of each construction stage. Interest during construction shall not accrue during any period in which construction is deferred or postponed by the United States as a result of a national emergency, as determined by the Secretary, if authority to forego such interest exists or is made available to the Secretary.

9.2 Repayment Concepts.

(a) Costs suballocated to non-Indian irrigation water will be paid by the subcontractors to the Contractor on the basis of their ability to pay as determined by the Secretary.

(b) Costs allocated to commercial power and costs suballocated to M&I water use shall be combined and repaid with interest at a rate of 3.342 percent per annum on the unpaid balance.

(c) Reimbursable costs allocated to recreation and fish

and wildlife are anticipated to be covered by a separate contract and repaid by the beneficiaries thereof.

(d) Repayment of costs allocated to irrigation of Indian lands shall be governed by the provisions of Section 402 of the Basin Project Act.

(e) Repayment of the project will occur by construction stages, with each stage having a separate 50-year repayment schedule. Upon completion of each cost allocation study referred to in Subarticle 9.1(a), subsequent to the initial study associated with the first construction stage, the Contractor's repayment obligation and the obligation allocated to each construction stage will be adjusted based on the latest cost allocation study, and the Contractor will be provided with a revised repayment schedule for the project and each construction stage. The Contracting Officer will adjust previous principal and interest payments made by the Contractor to reflect the new repayment schedule. For each year where an adjustment in payments is necessary, there will be an over or underpayment which will accrue with interest at the rate of 3.342 percent per annum (compounded annually) to the adjustment date. If the adjustment indicates that the Contractor overpaid principal and interest, the Contractor shall be entitled to a credit against its next payments to the United States. Conversely, if the Contractor owes additional principal and interest to the United States, such amount shall be paid to the United States by the Contractor within 12 months of receipt of a statement therefor from the Contracting Officer. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

9.3 Contractor's Construction Cost Repayment Obligation.

(a) The Contractor's repayment obligation shall consist of the total cost allocated to the water supply and power functions plus OM&R during construction and interest during construction on costs allocated to the M&I water and power functions, but shall not include costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors. Such entities shall include but not be limited to Indian tribes and councils in central Arizona receiving project water and the New Mexico recipients of water service from Hooker Dam or suitable alternative. The costs to be excluded shall be calculated as follows:

(i) Costs excluded from the Contractor's repayment obligation for New Mexico water service shall be determined by multiplying the project costs allocated to the water supply function by the ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to water users in Arizona in exchange for water delivered to users in New Mexico from or by means of project works, by the total quantity of Colorado River water projected to be delivered by the project throughout the overall repayment period.

(ii) The amount of other project costs which shall be excluded from the Contractor's repayment obligation shall be determined by multiplying the

project costs allocated to the water supply function by a ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to entities other than the Contractor, the subcontractors, and those users in New Mexico to whom water has been made available through the construction of Hooker Dam or suitable alternative by the total quantity of project water projected to be delivered throughout the overall repayment period; Provided, That project water projected to be delivered to such users will be computed based on an assumption of full development not later than the year 2005.

(b) The costs determined under Subarticles 9.3(a)(i) and (ii) above shall be subtracted from the water supply costs obtained from the separable costs-remaining benefits procedure to determine the Contractor's water supply costs. The Contracting Officer shall suballocate the Contractor's water supply costs to each of the construction stages based on the ratios obtained by dividing the allocable cost of the construction stage by the allocable cost of the project (see Operation 1, Exhibit "A"). The water supply costs assigned to each construction stage are then further suballocated between irrigation and M&I water use in proportion to projected total water deliveries to each function over the 50-year repayment period of each construction stage (Operation 2, Exhibit "A"). The summarization of the suballocations to each construction stage determines the total water

supply cost to be assigned to irrigation and M&I water use (Operation 3, Exhibit "A"). To determine the Contractor's repayment obligation, the Contractor's water supply suballocation to irrigation and M&I water uses, and the power allocation from the separable costs-remaining benefits procedure, shall each be adjusted for any revenues received by the United States prior to the notice(s) of completion and for any contributions received by the United States under the Plan 6 Funding Agreement for the features constructed in that stage, and for the 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and pumping plants (see Article 9.7) to determine the net amount of each function assigned to the Contractor (Operation 4, Exhibit "A"). The Contractor's repayment obligation shall be the summation of the net amount for each function.

(c) Once the Contractor's estimated or final repayment obligation has been determined by the Contracting Officer, the obligation shall be allocated to each construction stage based on the ratio obtained by dividing the allocable cost of each construction stage by the allocable cost of the project. Each construction stage will have a separate 50-year repayment period. The repayment obligation for each stage will be divided into interest-bearing and interest-free components. The interest-free component shall be the amount allocable to irrigation purposes for the stage. The interest-bearing component will be the amount obtained by subtracting the irrigation allocation for the stage from the obligation for the stage. The principal payments for each stage shall be determined by applying the percentages in Subarticle 9.3(f) to the repayment obligation for each stage. The total payment for each stage for any year shall be equal to the principal payment plus interest at the rate of 3.342 percent

per annum on the unpaid interest-bearing component of the repayment obligation for each stage. For the water supply system, the portion of each principal payment which is made by the Contractor from irrigation revenues received by the Contractor each year will be used by the United States to reduce the interest-free obligation. The remaining portion of the principal payments made by the Contractor each year for the water supply system will be used by the United States to reduce the interest-bearing obligation, and once the interest-bearing obligation has been retired, the entire principal payment made by the Contractor will be applied by the United States toward the interest-free obligation. For the other construction stages, the entire principal payment made by the Contractor each year for such stages will be applied by the United States to reduce the interest-bearing obligation first, and once such obligation has been retired, to reduce the interest-free obligation.

(d) At 7-year intervals following the determination of the Contractor's repayment obligation for the water supply system, or at more frequent intervals if it becomes apparent to the Contracting Officer that a significant change in water use has or will occur, until such time as the interest-bearing obligation for each construction stage has been repaid, the Contracting Officer will re-estimate the proportions of total water deliveries to irrigation and M&I water use over the 50-year repayment period for each stage. At such intervals, the Contracting Officer will adjust the original interest-bearing and interest-free allocation for each stage based on the new estimates and recalculate all preceding interest payments. Differences between amounts owed and amounts paid by the Contractor shall be adjusted by the Contracting Officer, who shall apply a credit against the

Contractor's next payment due or notify the Contractor of the additional amount due, as the case may be. All such adjustments shall include interest at the rate of 3.342 percent per annum (compounded annually). Any additional payments required from the Contractor shall be made within 12 months of the Contractor's receipt of a statement from the Contracting Officer therefor. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

(e) The Contracting Officer will notify the Contractor of (i) its estimated repayment obligation when construction of the first construction stage is substantially complete and upon completion of each subsequent construction stage, and (ii) the actual repayment obligation when the final construction stage has been completed, as determined by the Contracting Officer. In the event that the project ultimately consists only of the water supply system, New Waddell Dam, and Modified Roosevelt Dam, the Contractor's actual repayment obligation shall be limited to $2.0 billion. If prior to completion of construction of such features the Contracting Officer determines that the Contractor's repayment obligation for such features will exceed $2.0 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation. If construction of any other construction stage will result in an increase in the Contractor's repayment obligation by an amount equal to or less than the respective amount identified in Exhibit "B," which is attached hereto and made part of this contract, the Contractor's repayment ceiling may, after consultation with the Contractor, be increased by the

Contracting Officer by an amount equal to or less than the respective amount identified in Exhibit "B" by written notice thereof from the Contracting Officer to the Contractor. If construction of such other construction stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B," the Contracting Officer shall consult with the Contractor and the Contractor and the Contracting Officer shall agree upon one of the following courses of action prior to initiation of construction of such construction stage: (1) that additional repayment ceiling be made available from other construction stages, in which event the Contractor's repayment ceiling will be increased to the agreed-to amount by written notice from the Contracting Officer to the Contractor; or (2) that this contract be renegotiated to increase the Contractor's repayment ceiling; Provided, That these courses of action shall also apply in the event that, prior to completion of construction of such stage, the Contracting Officer determines that the construction of such stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B."

(f) Annual percentages of the repayment obligation for each construction stage shall be those set out in the following schedule or any revision thereof mutually agreed upon:

Repayment Year	Percent of Repayment Obligation (Annual)
1-7	1.0
8-14	1.3
15-21	1.6
22-28	2.0
29-35	2.6
36-42	2.7
43-49	2.7
50	2.7

(g) In the event that the Secretary contracts for delivery of non-project water under the provisions of Article 10.1, capital charges associated with such delivery shall be calculated, charged, and utilized in the same manner as capital charges deposited in the Development Fund pursuant to Article 8.18.

9.4 Payment of Contractor's Construction Cost Repayment Obligation.

(a) The Contractor shall make annual payments to the United States, to be credited to the Development Fund, which shall be sufficient, when combined with accruals from the other sources described in Section 403(f) of the Basin Project Act, the Hoover Power Plant Act of 1984, and other miscellaneous revenues, including but not limited to net wheeling charges, to effect repayment of the repayment obligation for each construction stage within a period of not more than 50 years beginning with the year following substantial completion of each construction stage. The Contractor's first payment shall be due on or before January 15 of the year following the year in which the Secretary announces the substantial completion of each construction stage. Annual payments thereafter shall be due on or before January 15 of each following year.

(b) The Contractor agrees to make annual payments calculated by the Secretary as follows:

(i) Calculate the annual principal payments required by the schedule in Subarticle 9.3(f) or any revision thereof for each construction stage.

(ii) Add to (i) the annual interest, at 3.342 percent, on the unpaid balance of the interest-bearing

allocation for each construction stage.

(iii) Determine the total amount of all interest and principal payments due for all construction stages.

(iv) Subtract therefrom the revenues estimated to be available from the Development Fund anticipating a zero balance at the end of each year in the Development Fund.

(v) Make adjustments for differences between estimated and actual revenues for the preceding year.

(c) On or before each December 15, beginning with December 15 of the year in which the Secretary notifies the Contractor of the substantial completion of the first construction stage, the Secretary will notify the Contractor of the amount of the annual payment due on the following January 15, which has been determined by the Secretary on the basis of the aforesaid calculation.

(d) The Contractor may make additional payments on the repayment obligation at any time subject to such terms and conditions as may be agreed upon by the Contractor and the Contracting Officer; Provided, however, That all interest due is paid at the same time, whereupon appropriate adjustments in the schedule of future payments will be made by the Secretary, who shall as promptly as possible give the Contractor written notice of the adjusted repayment schedule.

(e) It is understood and agreed that the Contractor shall be obligated for the payments set forth in Subarticle 9.4(a) hereof and that regardless of the delinquency or default in payment of any charges

due to the Contractor from any subcontractor, or a diminution in the water supply available to the Contractor, or regardless of any other reason, the Contractor shall complete repayment of each construction stage within a 50-year period beginning in the year following the announcement by the Secretary of substantial completion of such construction stage.

9.5 Commercial Power Rates. The Secretary will, consistent with applicable law, periodically review and provide for appropriate adjustments in the rates established for the sales of power and energy, revenues from which contribute to the Development Fund.

9.6 Other Costs Borne by the Contractor.

(a) In addition to the payments provided for in Article 9.4 hereof, and subject to the provisions of Subarticle 9.6(d) hereof, during such periods as the United States operates and maintains completed construction stages, the Contractor shall make advance payments for OM&R costs incurred by the United States. The United States will furnish the Contractor with an estimate in writing at least 6 months prior to substantial completion of construction of the water supply system, of the OM&R cost due from the Contractor to the end of the then current year, together with an estimate of such cost for the calendar year immediately following. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer, the Contractor shall advance to the United States the payments for the estimated OM&R cost to the end of the then current year and without further notice or demand shall on December 15 of the then current year and on June 15 of the following year advance to the United States in equal semiannual installments the Contractor's share of the estimated cost, including supervision and

administrative expense for the OM&R of the water supply system. Advance payments shall be made in subsequent years by the Contractor to the United States on the basis of estimates to be furnished by the United States on or before November 15 preceding said subsequent year and the advances of said payments shall be due and payable in equal semiannual payments on the following December 15 and June 15. Said OM&R costs are the total annual OM&R costs of completed construction stages which are allocated to the irrigation and M&I water supply functions less (i) the costs described in Subarticle 9.6(c) hereof, and (ii) an amount determined by multiplying the total of said annual costs by the ratio obtained by dividing the estimated amount of project water projected to be delivered in the subsequent year to entities other than the Contractor, the subcontractors, and those entities in New Mexico to which project water will be made available from Hooker Dam or suitable alternative, by the total amount of project water estimated to be delivered for use in that year.

(b) Differences between actual OM&R costs and the estimated costs shall be determined by the Contracting Officer and shall be adjusted in next succeeding estimates; Provided, however, That if in the opinion of the Contracting Officer the amounts advanced by the Contractor for any year are likely to be insufficient to pay the above-mentioned OM&R costs during such year, additional and sufficient sums of money shall be paid forthwith by the Contractor to the United States upon notice thereof and demand therefor by the Contracting Officer; Provided, further, That the United States will give Contractor reasonable notice in advance of any such deficiency.

(c) The Contractor's obligation to pay said OM&R costs

of completed construction stages will be reduced to the extent that project water is made available for use in New Mexico following completion of Hooker Dam or suitable alternative. Said reduction will be in the proportion which the quantity of project water projected to be delivered to water users in Arizona, in exchange for Gila River system waters delivered to water users in New Mexico from or by means of project works, bears to the total quantity of Colorado River water projected to be delivered to the project that year.

(d) In the event that responsibility for OM&R of project facilities is transferred to and assumed by the Contractor, the Contractor shall be relieved of the obligation to make OM&R payments associated with such facilities under Subarticle 9.6(a) of this contract. In that event, the United States shall pay or provide for payment of OM&R costs associated with delivery of water to entities other than the Contractor and the subcontractors. Such costs shall be computed in accordance with Subarticle 9.6(a) of this contract. If the Contractor does not receive payment in advance for such costs, the Contractor shall have no obligation to deliver such water.

(e) During the Hoover Dam cost-repayment period, the Contractor shall pay to the United States the sum of $0.25 for each acre-foot of water pumped from Lake Havasu for miscellaneous and M&I water purposes as determined by the Contracting Officer. The quantity of water pumped for such purposes will be determined by the Contracting Officer at the end of each calendar year and the Contractor notified of the amount due by March 1 of each subsequent year. Payment shall be due on May 1 following notification. Said payment shall be credited to the Colorado River Dam Fund

established by Section 2 of the Boulder Canyon Project Act.

9.7 Repayment of Costs of Excess Capacity in Granite Reef Aqueduct. The costs of providing any capacity in the Granite Reef Aqueduct and pumping plants in excess of 2,500 cubic feet per second shall be repaid by Contractor from funds available to Arizona pursuant to the provisions of Section 403(f) of the Basin Project Act, or by funds from sources other than the Development Fund.

9.8 Ad Valorem Taxes, Assessments, Tolls, and Other Charges. Within the legal limits available to it, the Contractor shall levy ad valorem taxes upon the taxable property within the service area of the Contractor at rates determined necessary by the Contractor to raise funds which, together with the revenues from the sale of water and such financial assistance from the Development Fund as the Secretary determines is available therefor, are sufficient to meet the obligations of the Contractor to make in full all payments to the United States on or before the date such payments become due and to meet its other obligations under this contract.

9.9 Continuation of Payments After Project Payout. Following payment to the United States of the Contractor's final payment for the last construction stage, the Contractor shall continue to make annual payments to the United States to be credited to the Development Fund in amounts equal to the average annual principal payment for the project during the overall repayment period. In the event that no augmentation project, as contemplated in the Basin Project Act, has been authorized or is under active consideration by the Congress at the time project construction costs have been repaid in full, payments under this formula will be not required; Provided, however, That payments will commence after repayment of the

project costs pursuant to the formula, or any adjustment thereof agreed to by the parties, at such time as an augmentation project is authorized by Congress and the costs thereof allocated to the Contractor are determined by the Secretary.

9.10 Defaults.

(a) The Contractor shall pay a penalty on payments, installments or charges which become delinquent, computed at the rate of 1 percent per month on the amount of such delinquent payments, installments, or charges from and after the date when the same become due until paid.

(b) No water shall be furnished to the Contractor during any period in which the Contractor may be in arrears more than 12 months in the payments to the United States required by Article 9.4 hereof.

(c) All rights of action for breach of this contract are reserved to the United States as provided by Federal law.

10. GENERAL PROVISIONS

10.1 Other Contracts. The Secretary reserves the right to contract directly with other water using entities concerning water supply through project facilities. In the event this occurs, the provisions of Article 8.17 hereof shall be applicable.

10.2 Title to Project Works. Title to all water supply system works and all project facilities constructed pursuant to the Basin Project Act and this contract shall be and remain in the United States until otherwise provided by Congress.

10.3 Reserve Funds.

(a) (1) Commencing with notice of transfer of OM&R for the Granite Reef Aqueduct, including the Havasu Pumping Plant, the Contractor

shall accumulate and maintain an emergency OM&R reserve fund, which the Contractor shall keep available to meet costs incurred during periods of interruption of water service.

(ii) The Contractor shall accumulate the reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $400,000 in any year in which the fund balance is less than $4,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for such purposes as those identified in Subarticle 10.3(a)(iv) hereof. Such annual deposits and the accumulation of interest and dividends to the reserve fund shall continue until $4,000,000 is accumulated. Interest and dividends accruing to fund balances shall be added to the fund in any year when the fund balance is greater than $4,000,000; Provided, That in no event shall the fund be increased to an amount greater than the actual amount of fixed OM&R costs for the preceding year as mutually determined by the Contractor and the Contracting Officer. Any balance in the fund in excess of the amount of fixed OM&R costs for the previous year shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted in consideration of the risk and uncertainty stemming from the size and complexity of the project, the size of the annual OM&R budget, additions to, deletions from, or changes in project works, or OM&R costs not

contemplated when this contract was executed.

(iv) The Contractor may make expenditures from such reserve fund only for meeting unforeseen and extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs (in situations where recurrence of severe operation and maintenance problems can be avoided or eliminated). Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) During any period in which any of the project works are operated and maintained by the United States, the reserve fund shall be available for like use by the United States.

(vi) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement indicating the principal and accumulated interest in the emergency OM&R reserve fund as of December 31 of the preceding year.

(b) (i) No later than 1 year following the Contractor's last construction advance under the Plan 6 Funding Agreement, the Contractor shall accumulate and maintain a repayment reserve fund to help assure payments to the United States under this contract.

(ii) The Contractor shall accumulate such reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $4,000,000 in any year in which the fund balance is less than $40,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for the

purpose for which it was established. Such annual deposits and the accumulation of interest to the reserve fund shall continue until $40,000,000 is accumulated. Any balance in the fund in excess of $40,000,000 shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted.

(iv) Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement of the principal and accumulated interest in the repayment reserve fund as of December 31 of the preceding year.

10.4 Recreational Use of Water Facilities.

(a) The enhancement of recreational opportunities in connection with the project works authorized pursuant to Title III of the Basin Project Act shall be in accordance with the provisions of the Federal Water Project Recreation Act, 79 Stat. 213, dated July 9, 1965, except as provided in Subarticle 10.4(b) hereof.

(b) Recreational development at Orme Dam and Reservoir shall be governed by the provisions of Section 302(d) of the Basin Project Act.

10.5 Confirmation of Contract.

(a) The Contractor, after the execution of this contract,

shall promptly seek to secure a decree of a court of competent jurisdiction of the State of Arizona confirming the execution of this contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor. This contract shall not be binding on the United States or the Contractor until such final decree has been entered.

(b) This contract shall be indivisible for purposes of validation and shall not be binding on the United States or the Contractor unless validated pursuant to the provisions of Subarticle 10.5(a) hereof in each and all of its terms and conditions.

10.6 Rules, Regulations, and Determinations.

(a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Reclamation Law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation Law.

(b) The Contracting Officer, after an opportunity has been offered to the Contractor for consultation, shall have the right to make rules, regulations, and determinations consistent with the provisions of this contract, the laws of the United States and the State of Arizona, including, without limitation, rules, regulations, and determinations relative to maximizing project benefits from pumping from Lake Havasu, the rate and schedule of pumping therefrom and the rate and schedule of pumping at the Granite Reef pumping plants, to add to or modify said rules, regulations, and determinations as may be deemed proper and necessary to

carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The Contractor and each subcontractor shall observe such rules, regulations, and determinations and each subcontract shall so provide.

(c) Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor and shall be conclusive upon the parties.

10.7 Books, Records, and Reports. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: the Contractor's financial transactions, water supply data, project operation, maintenance and replacement logs, project land and right-of-way use agreements, and other matters specifically relating to this contract that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

10.8 Notices. Any notice, demand, or request authorized or

required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States, when mailed, postage prepaid, or delivered to the General Manager of the Contractor, 23636 North 7th Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

10.9 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

10.10 Changes in Contractor's Organization. While this contract is in effect, no change shall be made in the Contractor's organization, by exclusion of lands, by dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written consent; Provided, however, That approval is hereby given to the inclusion of other counties as part of Contractor's service area, except, however, that the United States shall not be required, under this contract, to construct project facilities to serve lands within said additional counties.

10.11 Assignment Limited--Successors and Assigns Obligated. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this

contract or any part or interest therein shall be valid until approved in writing by the Contracting Officer.

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

10.13 Equal Opportunity. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment

without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Contracting Officer, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

10.14 Compliance With Civil Rights Laws and Regulations.

(a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures

necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

10.15 Officials Not to Benefit. No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

11. STATUS OF DECEMBER 15, 1972 CONTRACT

Upon judicial confirmation of this contract, the December 15, 1972 contract entitled "Contract Between the United States and the Central Arizona Water Conservation District For Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), shall be superseded and replaced by this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
Assistant Secretary-Water and Science
Department of the Interior

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

ATTEST:

_____
Secretary

By _____
President

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 1 SUBALLOCATION OF CONTRACTOR'S WATER SUPPLY COSTS TO CONSTRUCTION STAGES:

Construction Stage	Allocable Cost ($M)	Percentage	Water Supply Cost ($M)
Water Supply System	1,500	71%	1,280
New Waddell	300	14%	256
Cliff Alternative	100	5%	85
Tucson Term. Storage	60	3%	51
Hooker Alternative	50	2%	43
Buttes	100	5%	85
Total	2,110	100%	1,800

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 2 SUBALLOCATION OF WATER SUPPLY COST:

Construction Stage	Allocable Cost ($M) Construction	IDC	Water Distribution (%) Irrigation	M&I
Water Supply System	1,280	200	58%	42%
New Waddell	256	40	54%	46%
Cliff Alternative	85	10	54%	46%
Tucson Term. Storage	51	10	53%	47%
Hooker Alternative	43	10	50%	50%
Buttes	85	10	50%	50%
Total	1,800	280	100%	

	Construction Cost Distribution ($M) Irrigation	M&I	IDC Cost Distribution ($M) Irrigation	M&I
Water Supply System	742	538	116	84
New Waddell	138	118	22	18
Cliff Alternative	46	39	5	5
Tucson Term. Storage	27	24	5	5
Hooker Alternative	21	21	5	5
Buttes	43	43	5	5
Total	1,017	783	158	122

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 3 DETERMINATION OF TOTAL WATER SUPPLY COST:

	Total Cost Distribution ($M)		
	Irrigation	M&I	Total
Water Supply System	742	622	1,364
New Waddell	138	136	274
Cliff Alternative	46	44	90
Tucson Term. Storage	27	29	56
Hooker Alternative	21	26	47
Buttes	43	48	91
Total	1,017	905	1,922

Irrigation = Irrigation construction cost
M&I = M&I construction cost + M&I IDC

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 4 ADJUSTMENTS TO ALLOCATED COST:

	Irrigation Cost ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)	M&I ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)
Water Supply System	742	-4		33	622	10		32
New Waddell	138		-45		136		-135	
Cliff Alternative	46				44		-30	
Tucson Term. Storage	27				29			
Hooker Alternative	21				26			
Buttes	43				48			
Total	1,017	-4	-45	33	905	10	-165	32

	Power Cost ($M)	Interim Operations ($M)	Total ($M)
Water Supply System	328	-100	1,663
New Waddell	61		155
Cliff Alternative	20		80
Tucson Term. Storage	12		68
Hooker Alternative	9		56
Buttes	19		110
Total	449	-100	2,132

EXHIBIT "B"

CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD) REPAYMENT CEILING (Billions of Dollars)

		Remaining Potential Stages				
	Water Supply System, New Waddell, and modified Roosevelt Dams	Tucson Terminal Storage	Cliff Dam Alternative	Hooker Dam Alternative	Buttes Dam	Total
Amount allocable to CAWCD repayment ceiling based on October 1988 prices.	$1.681	$.058	$.060	$.035	$.100	$.253
Inflation (4%) on features remaining to be completed, plus an amount for unforeseen contingencies (.82 of the inflation component)[1]	.100	.032	.035	.047	.133	$.247
Additional costs which could be allocated to CAWCD if the Gila River Indian Community does not take CAP water	.259	----	----	----	----	----
	----	----	----	----	----	----
Total	$2.040	$.090	$.095	$.082	$.233	$.500
Rounded	$2.000					$.500

[1] Inflation calculations based on the assumption that Tucson terminal storage and the Cliff Dam alternative are completed in 1995, and that the Hooker Dam alternative and Buttes Dam are completed in 2002.

Exhibit "B"

Assignment among RWCD, CAWCD and The United States
(See Exhibit "12.3." to Agreement)

EXHIBIT "12.3"

RWCD ASSIGNMENT TO CITIES

ASSIGNMENT

THIS AGREEMENT, dated as of February 12, 1988, is made and entered into by and among the United States of America acting through the Secretary of the Interior, the Central Arizona Water Conservation District, the Roosevelt Water Conservation District, the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa and Phoenix, and the Arizona Town of Gilbert.

R E C I T A L S

A. The United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members.

B. The foregoing settlement agreement requires the assignment by the Roosevelt Water Conservation District to the Cities and Town participating in the settlement of a portion of the agricultural water supply available to Roosevelt Water Conservation District from the Central Arizona Project.

C. The settlement agreement further requires the Secretary of the Interior, in certain events, to make available to the Cities and Town participating in the settlement a portion of the

agricultural water supply otherwise available from the Central Arizona Project.

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix and the Town of Gilbert.

(b) "City" shall mean any one of the Cities.

(c) "Contractor" shall mean the Central Arizona Water Conservation District.

(d) "Repayment Contract" shall mean the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 15, 1972 (Contract No. 14-06-W-245), and any amendment or revision thereof.

(e) "Secretary" and "Contracting Officer" shall mean the Secretary of the Interior or his duly authorized representative.

(f) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America; the Salt River Pima-Maricopa Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District.

(g) "Subcontract" shall mean the Subcontract among the United States, the Central Arizona Water Conservation District, and the Roosevelt Water Conservation District, Providing for Water Service, Central Arizona Project, dated [to be supplied] (Contract No. [to be supplied]).

(h) "Subcontractor" shall mean the Roosevelt Water Conservation District.

All other terms used in this Agreement which are defined in the Repayment Contract or the Subcontract shall have the meanings ascribed to them in the Repayment Contract and the Subcontract.

2. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, and for each Year thereafter until the term of the Subcontract expires, Subcontractor hereby assigns to the Cities an amount of Project Water, to be taken from Subcontractor's annual entitlement to Agricultural Water under Article 4.13 of the Subcontract, equal to the lesser of (a) 5,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, or (b) such amount of Project Water as is available from Subcontractor's annual entitlement to Agricultural Water after first providing for delivery to the Subcontractor, at the Subcontractor's Project turnout, of 8,000 acre-feet of Agricultural Water.

3. (a) If and when, as a result of a reduction in the acreage of eligible lands in Subcontractor's service area,

Subcontractor's entitlement to Agricultural Water under Article 4.13 of its Subcontract is insufficient to provide for the delivery to the Cities at the Cities' Project turnouts of a total amount of 3,000 acre-feet of Project Water (after first providing for the delivery of Subcontractor's entitlement to Agricultural Water as determined in accordance with subparagraph (b) of this Paragraph) in a Year in which the total supply of Agricultural Water available for delivery from the Project is 450,000 acre-feet or more, the Secretary shall thereafter make available for delivery to the Cities from the total supply of Agricultural Water otherwise available for delivery from the Project in each Year an amount of Project Water equal to the difference between (i) 3,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, and (ii) the amount of Project Water available to the Cities as a result of the assignment made in Paragraph 2 of this Agreement.

(b) If and when the provisions of subparagraph (a) of this Paragraph are implemented, Subcontractor's entitlement (i) to 8,000 acre-feet of Agricultural Water under subparagraph (b) of Paragraph 2 of this Agreement or (ii) to such lesser amount of Agricultural Water as may be determined in conformance with the provisions contained in subparagraph (d) of Paragraph 12 of this Agreement shall be subject to reduction in an amount equal to Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract multiplied by the amount of Agricultural Water made available by the Secretary for delivery to the Cities pursuant to subparagraph (a) of this Paragraph.

(c) Attached hereto as Appendix A are examples of how Paragraphs 2 and 3 of this Agreement are intended to operate under various conditions.

4. (a) Project Water made available to the Cities pursuant to Paragraph 2 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	972 acre-feet per Year;
City of Glendale	=	682 acre-feet per Year;
City of Scottsdale	=	23 acre-feet per Year;
City of Tempe	=	23 acre-feet per Year;
City of Mesa	=	627 acre-feet per Year;
City of Phoenix	=	1,136 acre-feet per Year;
Town of Gilbert	=	1,537 acre-feet per Year;
TOTAL	=	5,000 acre-feet per Year.

(b) Project Water made available to the Cities pursuant to Paragraph 3 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	583 acre-feet per Year;
City of Glendale	=	409 acre-feet per Year;
City of Scottsdale	=	14 acre-feet per Year;
City of Tempe	=	14 acre-feet per Year;
City of Mesa	=	376 acre-feet per Year;
City of Phoenix	=	682 acre-feet per Year;
Town of Gilbert	=	922 acre-feet per Year;
TOTAL	=	3,000 acre-feet per Year.

(c) Prior to the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted by mutual agreement of such Cities. On and after the enforceability date of the Settlement Agreement, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted only by mutual agreement of such Cities, the Contractor, and the United States.

(d) In the event this Agreement shall become effective and any City ("designating City") entitled to receive water hereunder is unable to take delivery of such water by virtue of not having constructed a treatment plant capable of taking deliveries of water from the Central Arizona Project, the designating City shall in writing designate one or more Cities which are also parties to this Agreement to act as the interim recipients ("interim recipient") of the designating City's water, and water made available to the designating City under this Agreement shall be delivered by Contractor to the interim recipient(s) until such time as the designating City's treatment plant is completed and ready to take delivery of and treat deliveries of water from the Central Arizona Project. The designating City shall notify Contractor and Subcontractor of any such designation and shall also provide Contractor and Subcontractor with copies of any agreement between the designating City and the interim recipient(s). Any

such agreement shall not be inconsistent with any provisions of the Repayment Contract, the Subcontract, or this Agreement.

5. Notwithstanding anything in the Repayment Contract or the Subcontract to the contrary, Project Water made available to the Cities pursuant to this Agreement may be used for any M&I Water uses including but not limited to ground water recharge.

6. Notwithstanding any schedule or other instruction to the contrary, Project Water made available to the Cities pursuant to this Agreement, including any water delivered under a designation agreement entered into pursuant to Paragraph 4(d) hereof, shall be accounted for and treated by the Contractor and the Contracting Officer as having been scheduled for delivery by the Cities, and delivered to the Cities, prior to the delivery of any portion of the Cities' entitlements to Project M&I Water under the Cities' M&I Water service subcontracts (City of Chandler, Contract No. 5-07-30-W0070; City of Glendale, Contract No. 5-07-30-W0062; City of Scottsdale, Contract No. 5-07-30-W0063; City of Tempe, Contract No. 5-07-30-W0061; City of Mesa, Contract No. 5-07-30-W0060; City of Phoenix, Contract No. 5-07-30-W0059; Town of Gilbert, Contract No. [to be supplied]), prior to the delivery of any portion of the Cities' entitlements to under the Cities' Project Water Lease Agreements (Exhibits "3.m.1" through "3.m.7" of the Settlement Agreement), and prior to the delivery of any portion of the Cities' entitlements to "Colorado River water" under and as defined in the Cities' River Water Exchange Contracts (Exhibits "3.h.1" through "3.h.7" of the Settlement Agreement).

7. Except as otherwise provided in Paragraph 11 hereof, the Cities shall make payment for Project Water made available to the Cities pursuant to this Agreement in accordance with the terms and conditions of contracts to be entered into among the United States, the Contractor, and each of the Cities, the forms of which are attached as Exhibits "3.h.1" through "3.h.7" to the Settlement Agreement.

8. Except as provided in Paragraph 10 of this Agreement, nothing in this Agreement shall relieve the Subcontractor of its obligation to make the payments required in the Subcontract.

9. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract, the costs associated with the delivery of Project Water to the Cities pursuant to this Agreement shall be nonreimbursable, and such costs shall be excluded from the Contractor's repayment obligation.

10. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the Subcontractor's obligation to pay Agricultural Water service capital charges pursuant to Subarticle 5.2(a) of the Subcontract shall be reduced in each Year by an amount equal to $2.00 per acre-foot, or such amount as may be determined by the Contracting Officer based on payment capacity determinations provided for in the Repayment Contract, multiplied by the total amount of Project Water assigned by the Subcontractor

to the Cities pursuant to Paragraph 2 of this Agreement and scheduled for delivery by the Cities in such Year.

11. (a) Each City agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any operation, maintenance, and replacement costs associated with Project Water made available for delivery to the City pursuant to Paragraph 2 of this Agreement. Each City further agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any Agricultural Water service capital charges associated with any Project Water assigned by the Subcontractor to the City pursuant to Paragraph 2 of this Agreement. The liability of each City under this Paragraph 11(a) shall be its sole and separate obligation, and shall not be an obligation joint and several with any other City or Cities.

(b) In the event any City shall default and fail to indemnify Contractor or Subcontractor as required in Paragraph 11(a) hereof, then such City's entitlement to water under this Agreement shall be forfeit and such entitlement shall be redistributed pro rata to each of the other Cities which are parties to this Agreement. The redistribution of water shall be effected by means of a notice from Subcontractor and Contractor, if either has not been indemnified, to the defaulting City and to the other Cities which are parties to this Agreement, and such redistribution shall be effective on the thirty-fifth day after the notice is given. Within ten days of receiving the notice of re-distribution, each City other than the defaulting City shall pay to

Subcontractor or Contractor, as the case may be, its share of the amount the defaulting City shall have failed to pay, which share shall be in the proportion which the amount of water redistributed to such City bears to the total amount of water redistributed. In the event any City to which water is redistributed shall fail to make the payment hereby required to be made within the time herein prescribed, Subcontractor or Contractor, as the case may be, shall be free to redistribute such City's entitlement to redistributed water to any other City which makes such payment and which is also a party to this Agreement.

12. (a) Subcontractor's entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be 5.98 percent of the total supply of Agricultural Water available for delivery from the Project (subject to reduction by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer) unless, prior to the issuance by the Secretary of Notice of Completion of the Water Supply System, Subcontractor notifies the Contractor and the Contracting Officer that it wishes to reduce its entitlement to a lesser percentage of the total Agricultural Water supply. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement under Subarticle 4.13(a) of the Subcontract shall be as stated in the notice from the Subcontractor to the Contractor and the Contracting Officer.

(b) Notwithstanding the foregoing, the Contractor and the Contracting Officer may at any time prior to the issuance of

such Notice of Completion require the Subcontractor to specify its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract by notifying the Subcontractor that it must specify such entitlement within six months of the date that the Contractor and the Contracting Officer issue such notice. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be as specified by the Subcontractor in response to the notice issued by the Contractor and the Contracting Officer. In the event the Subcontractor fails to make such specification within the time required, Subcontractor's entitlement shall be fixed at 5.98 percent of the total Agricultural Water supply (subject to adjustment by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer).

(c) At the time the Subcontractor notifies the Contractor and the Contracting Officer of its percentage entitlement pursuant to subparagraph (a) of this Paragraph, or at the time the Subcontractor specifies its entitlement pursuant to subparagraph (b) of this Paragraph, Subcontractor may relinquish:

(i) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(a) of the Subcontract to be made available to the Subcontractor as a result of deductions made in other subcontractors' entitlements to Agricultural Water to reflect removal of eligible lands from agricultural use; and

(ii) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(b) of the Subcontract to be made available to the Subcontractor as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available;

Provided, however, that the Subcontractor shall relinquish at least 5,000 acre-feet, or the percentage of the projected Agricultural Water supply that most closely approximates 5,000 acre-feet, of any additional Agricultural Water entitlement to which the Subcontractor would be entitled under Subarticle 4.13(b) of the Subcontract as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available.

(d) Subject to the requirements and limitations of this Paragraph 12, Subcontractor may select its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract based upon its own evaluation of potential Agricultural Water supplies and its own requirements; Provided, however, that said Subcontractor's entitlement to Agricultural Water shall in no event exceed the lesser of 5.98 percent or the percentage entitlement determined by dividing the number of acres of eligible lands in the Subcontractor's service area by the total number of acres of eligible lands in the service areas of all subcontractors of Agricultural Water, as determined by the Contracting Officer.

13. Except as provided in this Agreement, all terms and conditions of the Subcontract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

Attest:

_____
Secretary

CENTRAL ARIZONA WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: George W. Barr
Title: President

Attest:

_____
Secretary

ROOSEVELT WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: Mark W. Dobson
Title: President

Attest:

_____
Clerk

Approved as to Form:

_____
City Attorney

CITY OF PHOENIX, a Municipal corporation, MARVIN A. ANDREWS, City Manager

By _____

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF SCOTTSDALE, an Arizona municipal corporation

By

Name: Herbert R. Drinkwater

Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF GLENDALE, an Arizona municipal corporation

By

Name: George R. Renner

Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF MESA, an Arizona municipal corporation

By

Name:

Title:

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF TEMPE, an Arizona municipal corporation

By

Name: Harry E. Mitchell

Title: Mayor

. . .

Attest:

Clerk, Acting

Approved as to Form:

City Attorney

CITY OF CHANDLER, an Arizona municipal corporation

By

Name: Richard Dugan

Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

TOWN OF GILBERT, an Arizona municipal corporation

By

Name: Steve M. Berman

Title: Mayor

. . .

APPENDIX A

The following are five examples of how Paragraphs 2 and 3 of the Assignment are intended to operate under varying water supply conditions and assuming varying entitlements to CAP Agricultural Water for Roosevelt Water Conservation District ("RWCD") under Subarticle 4.13(a) of RWCD's CAP Agricultural Subcontract.

EXAMPLE 1

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 1,000,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 5.98%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 59,800 AF.

(5.98% X 1,000,000 AF - 59,800 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 59,800 AF - 8,000 AF = 51,800 AF

5. RWCD's balance = 54,800 AF.

EXAMPLE 2

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 13,005 AF.

(2.89% X 450,000 AF = 13,005 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 13,005 AF - 8,000 AF = 5,005 AF.

5. RWCD's balance = 8,005 AF.

EXAMPLE 3

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,890 AF.

(2.89% X 100,000 AF = 2,890 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment = 0 (because RWCD's entitlement is sufficient to provide for delivery to the Cities of at least 3,000 AF in any year in which the total supply is 450,000 AF or more -- See Example 2).

EXAMPLE 4

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 10,980 AF.

(2.44% X 450,000 AF - 10,980 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

   (a) 5,000 AF, or

   (b) 10,980 AF - 8,000 AF = 2,980 AF.

5. Cities' entitlement under Paragraph 3 of the Assignment =

   (a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area:

   Cities' entitlement = 3,000 AF - 2,980 AF = 20 AF

   CITIES' TOTAL = 3,000 AF

   (b) IF 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0

   CITIES' TOTAL = 2,980 AF

EXAMPLE 5

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,440 AF.

(2.44% X 100,000 AF = 2,440 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment:

(a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement = 3,000 AF.

(b) RWCD's contribution = 2.44% X 3,000 AF = 73 AF.

(c) RWCD's net entitlement = 2,440 AF - 73 AF = 2,367 AF.

BUT

(d) If 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0.

Exhibit "C"

Total CAP Water Available to M&I:	443,067	A
SRPMIC Agreement Water Calculations		
• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	2,088	
Total Agreement Water Credit:	19,912	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	462,979	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	69.64%	

CAP Water Available to M&I: 443,067 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	Delivery Without Agreement (AF)	Delivery With Agreement* (AF)
Avondale	4,099	0.64%	0.00%	0	2,833	2,855
Peoria	17,849	2.79%	0.00%	0	12,338	12,430
Glendale	14,083	2.20%	13.64%	3,545	9,735	12,276
Phoenix	113,882	17.83%	22.73%	5,909	78,721	83,422
Scottsdale	19,702	3.08%	0.45%	118	13,619	13,803
Chaparral City	6,978	1.09%	0.00%	0	4,824	4,859
Prescott	7,127	1.12%	0.00%	0	4,927	4,963
Payson	4,995	0.78%	0.00%	0	3,453	3,478
Tempe	4,315	0.68%	0.45%	118	2,983	3,087
Mesa	29,527	4.62%	12.55%	3,262	20,411	22,834
Apache Jct	6,000	0.94%	0.00%	0	4,147	4,178
Chandler	3,668	0.57%	19.45%	5,056	2,536	6,075
Gilbert	7,235	1.13%	30.74%	7,991	5,001	10,604
Casa Grande	8,884	1.39%	0.00%	0	6,141	6,187
Tucson	148,420	23.23%	0.00%	0	102,595	103,359
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

Total CAP Water Available to M&I:	218,338	A
SRPMIC Agreement Water Calculations		
• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	3,496	
Total Agreement Water Credit:	18,504	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	236,842	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	35.62%	

CAP Water Available to M&I: 218,338 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	Delivery Without Agreement (AF)	Delivery With Agreement* (AF)
Avondale	4,099	0.64%	0.00%	0	1,385	1,460
Peoria	17,849	2.79%	0.00%	0	6,031	6,359
Glendale	14,083	2.20%	13.64%	3,545	4,759	6,280
Phoenix	113,882	17.83%	22.73%	5,909	38,481	42,675
Scottsdale	19,702	3.08%	0.45%	118	6,657	7,061
Chaparral City	6,978	1.09%	0.00%	0	2,358	2,486
Prescott	7,127	1.12%	0.00%	0	2,408	2,539
Payson	4,995	0.78%	0.00%	0	1,688	1,779
Tempe	4,315	0.68%	0.45%	118	1,458	1,579
Mesa	29,527	4.62%	12.55%	3,262	9,977	11,681
Apache Jct	6,000	0.94%	0.00%	0	2,027	2,137
Chandler	3,668	0.57%	19.45%	5,056	1,239	3,108
Gilbert	7,235	1.13%	30.74%	7,991	2,445	5,424
Casa Grande	8,884	1.39%	0.00%	0	3,002	3,165
Tucson	148,420	23.23%	0.00%	0	50,151	52,874
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

EXHIBIT "3.h.4."

River Water Exchange Contract
City of Tempe, Arizona

EXHIBIT "3.h.4."

River Water Exchange Contract
City of Tempe, Arizona

Exhibit "3.h.4"
RIVER WATER EXCHANGE CONTRACT
City of Tempe, Arizona

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Exhibit "3.h.4"
RIVER WATER EXCHANGE CONTRACT
City of Tempe, Arizona

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Exhibits

Exhibit "A"	CAP Master Repayment Contract
Exhibit "B"	Assignment among RWCD, CAWCD and the United States
Exhibit "C"	SRPMIC Agreement Water Calculations (Tables 1 and 2)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE CITY OF TEMPE, ARIZONA
PROVIDING FOR WATER SERVICE

ARTICLE 1
Preamble

1. THIS CONTRACT, made as of the 12th day of February, 1988, in pursuance of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549, and 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), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, hereinafter referred to collectively as the "Federal Reclamation Laws," and the various authorities and responsibilities of the Secretary of the Interior in relation to Indians and Indian Tribes, as contained in Title 25 U.S.C. and 43 U.S.C. § 1457, among THE UNITED STATES OF AMERICA, acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as "CAWCD," a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the CITY OF TEMPE, Arizona, hereinafter referred to as the "City," with its principal place of business at 31 East 5th Street, Tempe, Arizona;

WITNESSETH, THAT:

ARTICLE 2
Explanatory Recitals

2. 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., CAWCD 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 CAWCD, shall be a party to contracts that are in conformity with and subsidiary to the master contract; and

WHEREAS, the United States and CAWCD entered into Contract No. 14-06-W-245 dated December 15, 1972, which was amended on

December 1, 1988, hereinafter referred to as the "Repayment Contract," a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, whereby CAWCD agrees to repay to the United States the reimbursable costs of the Central Arizona Project allocated to CAWCD; and

WHEREAS, the City has entered into a water service subcontract with the United States and CAWCD for municipal and industrial water service from water supplies available from the Central Arizona Project, Contract No. 5-07-30-W0061; and

WHEREAS, the United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert, Arizona, and CAWCD have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members, to finally resolve pending litigation on water rights and damage claims, and to seek funding for implementation of the settlement; and

WHEREAS, the United States, acting through the Secretary of the Interior, has both a trust and fiduciary responsibility to make the Salt River Pima-Maricopa Indian reservation a permanent Tribal homeland for the Salt River Pima-Maricopa Indian Community; and

. . .

WHEREAS, as part of the water rights settlement with the Salt River Pima-Maricopa Indian Community, the United States is required to contract with the City for the delivery through Central Arizona Project facilities of not to exceed one hundred (100) acre-feet per year of Colorado River water which was not included in the determination of water supplies available to the Central Arizona Project, plus certain additional amounts of Central Arizona Project water to be made available each year by the Roosevelt Water Conservation District or the Secretary of the Interior from Central Arizona Project water supplies otherwise available for agricultural use;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 3
Definitions

3. For purposes of this Contract:

(a) "Agricultural water" shall mean water made available from the Central Arizona Project for the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than five acres.

(b) "CAWCD's service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such other counties as may hereafter become part of the District, . . .

exclusive of any Indian reservation land lying wholly or partly within said Counties.

(c) "Central Arizona Project" or "CAP" or "project" shall mean the project and works authorized by Section 301(a) of the Colorado River Basin Project Act and constructed by the United States pursuant to the provisions of said Act.

(d) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix, and the Town of Gilbert.

(e) "Colorado River water" shall mean that Colorado River mainstream water to be delivered to the City under this Contract which has a Colorado River priority pre-dating September 30, 1968.

(f) "Contracting Officer" shall mean the Secretary or his authorized designee acting on his behalf.

(g) "Distribution works" shall mean those facilities constructed or used for the purpose of distributing water to or within the City's service area after said water has been transported through the water supply system to the City's project turnout(s).

(h) "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be amended or revised.

. . .

(i) "Miscellaneous water" shall mean water made available from the Central Arizona Project, or by exchange for such water, for recreational and fish and wildlife purposes at other than project facilities, and which has a lesser priority of use than agricultural water.

(j) "Municipal and industrial water," hereinafter sometimes referred to as "M&I water," shall mean water made available from the Central Arizona Project other than agricultural water and miscellaneous water.

(k) "Notice of completion" shall mean the notice which the Contracting Officer issues to CAWCD to announce the substantial completion of the water supply system, or of those features of the project which include or comprise the water supply system, or of the entire project if constructed concurrently, thereby initiating payments therefor allocated to CAWCD.

(l) "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

(m) "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

(n) "Assignment Water" shall mean that water to be delivered to the City under this Contract which is made available to the City by the Roosevelt Water Conservation District ("RWCD") or the Secretary of the Interior pursuant to the Assignment, dated as of February 12, 1988, among the United States, CAWCD, RWCD, . . .

and the Cities. A copy of the Assignment is attached hereto as Exhibit "B" and by this reference made a part hereof.

(o) "Project works" shall mean the principal works described in Section 301(a) of the Colorado River Basin Project Act, and appurtenances thereto, or as modified pursuant to the Repayment Contract, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

(p) "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from Colorado River water or Assignment Water as defined herein, but shall not include any water delivered through the project works for ground water recharge purposes.

(q) "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

(r) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, RWCD, the Roosevelt Irrigation District, the Cities, and CAWCD.

(s) "Subcontractor" shall mean any irrigation district, municipality, individual, or any other entity which enters into a water service subcontract with the United States and CAWCD in furtherance of the provisions of the Colorado River Basin Project Act.

(t) "Time of shortage" shall mean a calendar year for which the Secretary determines that a shortage exists pursuant to Section 301(b) of the Colorado River Basin Project Act, such that there is not sufficient water available for delivery from the Central Arizona Project in that year (after reduction in consideration of anticipated losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein) to meet fully the entitlements of Indian contractors and non-Indian municipal and industrial subcontractors of Central Arizona Project water supplies.

(u) "Transferred works" shall mean such features of the project or such facilities of the water supply system as to which OM&R responsibility is transferred from the United States to the Operating Agency.

(v) "Water supply system" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila, and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

(w) "Year" shall mean the period between January 1 through the next succeeding December 31.

ARTICLE 4
Term

4. This Contract shall become effective upon its execution by the parties hereto and its term shall be perpetual.

ARTICLE 5
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 100 acre-feet; and

(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 23 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 14 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery point on the Colorado River, and shall be subject to reduction on

account of losses by reason of evaporation and seepage occurring during the transportation of such water through the water supply system to the City's project delivery point. Said losses occurring on the City's Colorado River water supplies shall be determined by the Contracting Officer or the Operating Agency, but shall not exceed the City's pro rata share of losses as compared to losses due to evaporation and seepage occurring during transportation through the water supply system of all water supplies delivered during a year.

(d) The City's entitlement to Assignment Water under Subparagraphs 5(b)(ii) and 5(b)(iii) hereof, and its rights and obligations with respect to such Assignment Water, shall be subject to the terms and conditions of the Assignment attached hereto as Exhibit "B".

(e) The City's entitlement to Colorado River water and Assignment Water under this Contract shall be in addition to the City's entitlement to Central Arizona Project water for municipal and industrial use under the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0061).

(f) During such periods as it operates and maintains the Central Arizona Project, the United States shall deliver Colorado River water and Assignment Water to which the City is entitled under this Contract through the water supply system. Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the United States shall use all reasonable diligence to make available to the City the quantity of Colorado River water and Assignment

Water specified in the schedule submitted by the City in accordance with Article 6 hereof. After transfer of OM&R responsibility to the Operating Agency, the United States shall make deliveries of Colorado River water and Assignment Water to the Operating Agency which shall make subsequent delivery of such water to the City as provided herein.

(g) The obligation of the United States and the Operating Agency to deliver Colorado River water and Assignment Water to the City under this Contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, the contract between the United States and the State of Arizona dated February 9, 1944, the Opinion of the Supreme Court of the United States in the case of Arizona v. California et al., rendered June 3, 1963, 373 U.S. 546, and the Decree of that court in said case, entered March 9, 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as hereafter modified;

(ii) Executive A, Seventy-Eighth Congress, Second Session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to

the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty, all hereinafter referred to as the Mexican Water Treaty;

(iii) The express understanding and agreement by the City that this Contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this Contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and City shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam, Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to City hereunder; and

(iv) The right of the United States or the Operating Agency temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works whatsoever affecting, utilized or, in the opinion of the Secretary or

the Operating Agency, necessary for delivery of water hereunder, it being understood that so far as feasible the United States or the Operating Agency will (i) do so during periods of low water demands and (ii) give reasonable notice in advance of such temporary discontinuance or reduction.

(h) Subject to the terms and conditions herein, the United States and the Operating Agency shall be obligated to deliver Colorado River water and Assignment Water to the City without regard as to whether or not the Salt River Pima-Maricopa Indian Community exercises its right to use any or all of the exchange water referred to in Paragraph 12 of the Settlement Agreement.

(i) Delivery and use of Colorado River water and Assignment Water under this Contract is further conditioned on the following, and the City hereby agrees that:

(i) All uses of Colorado River water, Assignment Water and return flow shall be consistent with Arizona water law unless such law is inconsistent with the Congressional directives applicable to the Central Arizona Project.

(ii) The system or systems through which Colorado River water and Assignment Water for municipal and industrial (including ground water recharge) purposes is conveyed after delivery to the City shall consist of pipelines, canals, distribution systems, or other conduits provided and maintained with linings adequate in the Contracting Officer's judgment to prevent excessive conveyance losses.

. . .

(iii) The City shall not pump, or within its legal authority, permit others to pump ground water from within the exterior boundaries of the City's service area, which has been delineated on a map filed with the Contractor and approved by the Contractor and the Contracting Officer, for use outside of said service area unless such pumping is permitted under Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time, and the Contracting Officer, CAWCD, and the City shall agree, or shall have previously agreed, that a surplus of ground water exists and drainage is or was required; Provided, however, That such pumping may be approved by the Contracting Officer and CAWCD, and approval shall not be unreasonably withheld, if such pumping is in accord with the Colorado River Basin Project Act and upon submittal by the City of a written certification from the Arizona Department of Water Resources or its successor agency that the pumping and transportation of ground water is in accord with Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time.

(iv) The City shall not sell or otherwise dispose of or permit the sale or other disposition of Colorado River water and Assignment Water for use outside of Maricopa, Pinal, and Pima Counties; Provided, however, That this does not prohibit exchanges of Colorado River water and Assignment Water covered by separate agreements; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to . . .

Article 6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0061).

(j) (i) Colorado River water and Assignment Water scheduled for delivery in any year under this contract may be used by the City or resold or exchanged by the City pursuant to appropriate agreements approved by the Contracting Officer and CAWCD. If said water is resold or exchanged by the Contractor for an amount in excess of that which the City is obligated to pay under this Contract, the excess amount shall be paid forthwith by the City to CAWCD for application against the CAWCD's repayment obligation to the United States; Provided, however, That the Contractor shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to OM&R costs.

(ii) Colorado River water and Assignment Water scheduled for delivery in any year under this Contract that cannot be used, resold, or exchanged by the City may be made available by the Contracting Officer or the Operating Agency to other users. If such water is sold to or exchanged with other users, the City shall be relieved of its payments hereunder only to the extent of the amount paid to the Contracting Officer and the Operating Agency by such other users, but not to exceed the amount the City is obligated to pay under this Contract for said water.

(iii) In the event the City, the Contracting Officer, or the Operating Agency is unable to sell any portion of the Colorado River water or Assignment Water scheduled for delivery

by the City but not required by the City in any year, the City shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water as determined by the Contracting Officer or the Operating Agency.

(k) The City shall have the right to use Colorado River water and Assignment Water received under this Contract for any purpose consistent with Arizona law, including ground water recharge.

ARTICLE 6
Procedure for Ordering Water

6. At least six months prior to the delivery of Colorado River water and Assignment Water to the City under this Contract, the Contracting Officer or the Operating Agency shall issue a written notice of availability of such water to the City. The City will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer and the Operating Agency showing the quantities of (i) Colorado River water and (ii) Assignment Water requested for delivery. The City shall submit a schedule which requests the delivery of all Assignment Water available to it. If the first notice of availability of water is issued to the City by the Contracting Officer or the Operating Agency prior to June 1 of any year, the first schedule for the balance of said year shall be submitted to the Contracting Officer and the Operating Agency within 30 days after the City's receipt of such notice. If such notice is issued after June 1 of any year, the first schedule shall be submitted to the Contracting

Officer and the Operating Agency within 30 days after the City's receipt of such notice and shall cover the balance of such year and the next succeeding year. Thereafter, the amounts, times, and rates of delivery of water to the City during any year shall be in accordance with a water delivery schedule for that year, such schedule to be determined in the following manner:

(a) On or before June 1 of each year, the Contracting Officer shall announce (i) the amount of Colorado River water and (ii) the amount of Assignment Water available for delivery during the following year in a written notice to the Operating Agency and the City.

(b) On or before October 1 of each year, the City shall submit in writing to the Operating Agency and the Contracting Officer a water delivery schedule indicating the amounts of (i) Colorado River water and (ii) Assignment Water desired by the City during each month of the following year along with a preliminary schedule of water desired for the succeeding 2 years. The City shall schedule for delivery each year all Assignment Water available to it for delivery during that year.

(c) Upon receipt of such schedule, the Contracting Officer and the Operating Agency shall review it and, after consultation with the City, shall make only such modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to the City are consistent with the delivery capability of the project, considering, among other things, the availability of water and the delivery schedules of all subcon-

tractors of Central Arizona Project water service; Provided, That this provision shall not be construed to reduce annual deliveries to the City.

(d) On or before November 15 of each year, the Contracting Officer or the Operating Agency shall determine and furnish to the City the water delivery schedule for the next succeeding year which shall show the amounts of (i) Colorado River water and (ii) Assignment Water to be delivered to the City during each month of that year.

(e) The monthly water delivery schedules may be amended by the Contracting Officer or the Operating Agency upon the City's written request. Proposed amendments shall be submitted by the City within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer or the Operating Agency in like manner as the schedule itself.

(f) In no event shall the Contracting Officer or the Operating Agency be required to deliver in any one month (i) an amount of Colorado River water greater than eleven percent (11%) of the City's maximum annual entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment Water greater than eleven percent (11%) of the City's maximum annual entitlement to Assignment Water under Subarticle 5(b)(ii) or 5(b)(iii) of this Contract; Provided, however, That the Contracting Officer or the Operating Agency may deliver a greater percentage of such water in any month if such increased delivery is compatible

with the overall delivery of Central Arizona Project water to CAP subcontractors as determined by the Contracting Officer and the Operating Agency, and if the City agrees to accept such increased deliveries.

ARTICLE 7
Points of Delivery--Measurement and Responsibility for Distribution of Water

7. (a) All water to be furnished to the City pursuant to this Contract shall be delivered at turnouts to be constructed by the United States at such point(s) on the water supply system as may be agreed upon in writing by the Contracting Officer and CAWCD, after consultation with the City.

(b) Unless the United States and the City agree by contract to the contrary, the City shall construct and install, at its sole cost and expense, connection facilities required to take and convey such water from the turnouts to the City's service area. The City shall furnish, for approval of the Contracting Officer, drawings showing the construction to be performed by the Contractor within the water supply system right-of-way six months before starting said construction. The facilities may be installed, operated, and maintained on the water supply system right-of-way subject to such reasonable restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by the Contracting Officer.

(c) All water delivered to the City pursuant to this Contract shall be measured with equipment furnished and installed by the United States and operated and maintained by the

United States or by the Operating Agency. Upon the request of the City or the Operating Agency, the accuracy of such measurements shall be investigated by the Contracting Officer or by the Operating Agency and the City, and any errors which may be mutually determined to have occurred therein shall be adjusted; Provided, That in the event the parties cannot agree on the required adjustment, the Contracting Officer's determination shall be conclusive.

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

(e) In addition to the right of the United States under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce the amount of water to be delivered through the Central Arizona Project, the United States or the Operating Agency may, after consultation with the City, temporarily discontinue or reduce the quantity of water to be furnished to the City as herein provided for the purpose of investigation, inspection, maintenance, repair, or replacement of any CAP facilities or any part thereof necessary for the furnishing of water to the City

under this Contract, but so far as feasible the United States or the Operating Agency shall coordinate any such discontinuance or reduction with the City and shall give the City due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Neither the United States, its officers agents, and employees, nor the Operating Agency, its officers, agents, and employees, shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to the City of less water than what has been paid for in advance, the City shall be entitled to be reimbursed for the appropriate proportion of advance payments of OM&R charges prior to the date of the City's next payment of OM&R charges or the City may be given credit toward the next payment of OM&R charges if the City should so desire.

ARTICLE 8
Priority in Case of Shortage

8. (a) Subject to the provisions of Section 304(e) of the Colorado River Basin Project Act, in the event of a shortage of the water supplies available to the Central Arizona Project, as determined by the Contracting Officer after consultation with CAWCD, Assignment Water furnished to the City under this Contract shall be subject to reduction in the same manner and to the same extent as agricultural water under Central Arizona Project agricultural water service subcontracts.

(b) In a time of shortage, the City's entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract shall be determined by the following formula:

City's entitlement to Colorado River water in a time of shortage = $[(X+Y) \cdot (A+B)/(C+D)] - [(X/D) \cdot A]$*

X = the City's entitlement to Central Arizona Project water for M&I water use under Article 4.12 of Contract No. 5-07-30-W0061, as the same may be amended or supplemented from time to time;

Y = 118 acre-feet;

A = the total amount of water available from the Central Arizona Project for non-Indian M&I water use (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein), as determined by the Contracting Officer in accordance with the method outlined in the Record of Decision of the Secretary published in the Federal Register on March 24, 1983;

B = the total amount of Colorado River water available to the Cities pursuant to this Contract with the City of Tempe and like contracts with the other Cities (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system);

C = 26,000 acre-feet.

D = the sum of all non-Indian municipal and industrial subcontractors' entitlements to Central Arizona Project water for M&I water use under Article 4.12 of all non-Indian CAP municipal and industrial subcontracts, as the same may be amended or supplemented from time to time;

* It is the intent of the parties that this calculation be performed in a manner which is consistent with the method of

calculation exemplified in Tables 1 and 2 attached hereto as Exhibit "C".

(c) Notwithstanding the provisions of Subarticle 5(c) of this Contract, the City's entitlement to Colorado River water, as determined in accordance with the formula set forth in Subarticle 8(b) hereof, shall be made available to the City at the City's project turnout(s).

(d) In a time of shortage, any Colorado River water available from the 22,000 acre-feet to be obtained by the United States pursuant to Subarticle 5(a) hereof in excess of that necessary to satisfy the entitlement of the City under Subarticle 8(b) of this Contract and the entitlements of the other Cities under Subarticle 8(b) of like contracts with such Cities shall be made available by the Secretary for delivery to non-Indian CAP municipal and industrial subcontractors other than the Cities pursuant to the Central Arizona Project M&I water service subcontracts with such subcontractors, pro rata in proportion to each such subcontractor's entitlement to Central Arizona Project water for M&I use under such subcontractor's Central Arizona Project M&I water service subcontract. The manner in which this Subarticle 8(d) is intended to operate is illustrated by Tables 1 and 2 attached hereto as Exhibit "C".

ARTICLE 9
Payments

9. (a) Subject to the provisions of Article 11 hereof, the City shall pay in advance for CAP OM&R costs estimated to be

incurred by the United States or the Operating Agency in delivering Colorado River water and Assignment Water to the City pursuant to this Contract. At least 6 months prior to the first delivery of such water, or as soon thereafter as is practicable, the Contracting Officer or the Operating Agency shall furnish the City with an estimate of the City's share of OM&R costs to the end of the initial year of water delivery and an estimate of such costs for the following year. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer or the Operating Agency, but prior to the delivery of water, the City shall advance to the Contracting Officer or the Operating Agency its share of such estimated costs to the end of the initial month of water delivery and without further notice or demand shall on or before the first day of each succeeding month of the initial year of water delivery and the following year advance to the Contracting Officer or the Operating Agency in equal monthly installments the City's share of such estimated costs. Advances of monthly payments for each subsequent year shall be made by the City to the Contracting Officer or the Operating Agency on the basis of annual estimates to be furnished by the Contracting Officer or the Operating Agency on or before June 1 preceding each said subsequent year, and the advances of payments for said estimated costs shall be due and payable in equal monthly payments on or before the first day of each month of the subsequent year. Differences between actual OM&R costs and estimated OM&R costs shall be adjusted in the next succeeding annual estimates; Provided, however, That if in the

opinion of the Contracting Officer or the Operating Agency the amount of any annual OM&R estimate is likely to be insufficient to cover the above-mentioned costs during such period, the Contracting Officer or the Operating Agency may increase the annual estimate of the City's OM&R costs by written notice thereof to the City, and the City shall forthwith increase its remaining monthly payments in such year to the Contracting Officer or the Operating Agency by the amount necessary to cover the estimated insufficiency. All estimates of OM&R costs shall be accompanied by data and computations relied on by the Contracting Officer or the Operating Agency in determining the amounts of the estimated OM&R costs and shall be subject to joint review by the City and the Contracting Officer or the Operating Agency.

(b) Other than as provided for in Exhibit "B" hereto with respect to Assignment Water, the City shall not be required to pay any water service capital charge(s) with respect to Colorado River water or Assignment Water to which the City is entitled under this Contract.

(c) Payment of all OM&R charges becoming due hereunder prior to or on the dates stipulated in Subarticle 9(a) hereof is a condition precedent to receiving water under this Contract.

(d) All payments to be made to the Operating Agency or the United States under Subarticle 9(a) hereof shall be made by the City as such payments fall due from revenues legally available to the City for such payment from the sale of water to its water users and from any and all other sources which might be legally

available; Provided, That no portion of the general taxing authority of the City, nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of this Contract, nor shall such sources be liable for any payments, contributions, or other costs pursuant to this Contract, or to satisfy any obligation hereunder unless duly and lawfully allocated and budgeted for such purpose by the City for the applicable budget year; and Provided, further, That no portion of this Contract shall ever be construed to create an obligation superior in lien to or on a parity with the Cities' revenue bonds now or hereafter issued. The City shall levy and impose such necessary water service charges and rates and use all the authority and resources available to it to collect all such necessary water service charges and rates in order that the City may meet its obligations hereunder and make in full all payments required under this Contract on or before the date such payments become due.

ARTICLE 10
Loss of Entitlement

10. The City shall have no right to delivery of Colorado River water or Assignment Water under this Contract during any period in which the City may be in arrears in the payment of any charges due the United States or the Operating Agency. The Contracting Officer or the Operating Agency may sell to another entity any water determined to be available under the City's entitlement for which payment is in arrears; Provided, however, That, except as provided to the contrary in Exhibit "B" hereto, the City may regain

the right to use any unsold portion of the water determined to be available under the City's original entitlement upon (i) payment of all delinquent charges plus any difference between the contractual obligation and the price received in the sale of the water by the Contracting Officer or Operating Agency and (ii) payment of charges for the current period.

ARTICLE 11
Refusal to Accept Delivery

11. In the event the City fails or refuses in any year to accept delivery of the quantity of water available for delivery to and required to be scheduled by it pursuant to this Contract, or in the event the City in any year fails to submit a schedule for delivery as provided in Article 6 hereof, said failure or refusal shall not relieve the City of its obligation to make the payments required in this Contract.

ARTICLE 12
Charges for Delinquent Payments

12. (a) The City shall be subject to interest, administrative, and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the City shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the City shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the City shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the City shall

pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

ARTICLE 13
Secretarial Control of Return Flow

13. (a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of CAWCD's service area as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for CAP use return flow which originates or results from water contracted for from the Central Arizona Project within the boundaries of CAWCD's service area if, in his judgment, such return flow is not being put to a beneficial use. The City may recapture and reuse or sell its return flow; Provided, however, That such return flow may not be sold for use outside Maricopa, Pinal, and Pima Counties; and

Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0061). The City shall, at least 60 days in advance of any proposed sale of such water, furnish the following information in writing to the Contracting Officer and CAWCD:

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

(ii) The location and proposed use of the return flow.

(iii) The price to be charged for the return flow.

(b) The price charged for the return flow may cover the cost incurred by the City for Colorado River water and Assignment Water plus the cost required to make the return flow usable. If the price received for the return flow is greater than the costs incurred by the City, as described above, the excess amount shall be forthwith paid by the City to the CAWCD for application against CAWCD's repayment obligation to the United States. Costs required to make return flow usable shall include but not be limited to capital costs and OM&R costs including transportation, treatment, and distribution, and the portion thereof which may be retained by the City shall be subject to the advance approval of CAWCD and the Contracting Officer.

(c) Any return flow captured by the United States and determined by the Contracting Officer and CAWCD to be suitable

and available for use by the City may be delivered by the United States or Operating Agency to the City as a part of the water supply for which the City has subcontracted pursuant to Contract No. 5-07-30-W0061, and such water shall be accounted and paid for pursuant to the provisions thereof.

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

ARTICLE 14
Water and Air Pollution Control

14. The City, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

ARTICLE 15
Quality of Water

15. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. Neither the United States nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. The City waives its right to make a claim against the United States, the Operating Agency, or any

subcontractor because of changes in water quality caused by the commingling of water to be delivered under this Contract with other water.

ARTICLE 16
Equal Opportunity

16. During the performance of this Contract, the City agrees as follows:

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

(b) The City will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The City will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising said labor union or workers' representative of the City's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The City will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The City will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the City's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the City may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as pro-

vided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The City will include the provisions of Sub-articles 16(a) through 16(g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The City will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the City becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 17
Compliance with Civil Rights Laws and Regulations

17. (a) The City shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national

origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the City agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

ARTICLE 18
Notices

18. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the City and CAWCD, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States and CAWCD, when mailed, postage prepaid, or delivered to the Manager of the City, 31 East 5th Street,

Tempe, Arizona 85281, on behalf of the City and the United States, when mailed, postage prepaid, or delivered to the General Manager, Central Arizona Water Conservation District, 23636 North Seventh Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

ARTICLE 19
Assignment Limited--Successors and Assigns Obligated

19. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid unless and until approved in writing by the Contracting Officer and CAWCD.

ARTICLE 20
Officials Not to Benefit

20. No Member of or Delegate to Congress, Resident Commissioner, or official of the City shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

ARTICLE 21
Transfer of OM&R Responsibility to CAWCD; Project Repayment

21. (a) At or prior to the date that the United States transfers OM&R responsibility for project works associated with delivery of water to the Cities to CAWCD as the Operating Agency, the United States shall secure the agreement of CAWCD to perform the United States' obligations under this Contract to deliver water under this Contract through the transferred works.

(b) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract and any amendment or revision thereof, the costs associated with the delivery of water to the City under this Contract shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

ARTICLE 22
Repayment Contract Controlling

22. Pursuant to the Repayment Contract, the United States has agreed to construct and, in the absence of an approved Operating Agency, to operate and maintain the works of the Central Arizona Project and to deliver Central Arizona Project water to the various subcontractors within CAWCD's service area; and CAWCD has obligated itself for the payment of various costs, expenses, and other amounts allocated to CAWCD pursuant to Article 9 of the Repayment Contract. The City expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this Contract No. 9-07-30-W0238 the day and year first above-written.

. . .

. . .

. . .

THE UNITED STATES OF AMERICA

By _____

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: _____
Secretary

By _____
President

CITY OF TEMPE, ARIZONA

Attest: _____
Clerk

By _____
Mayor

Approved
as to Form: _____
City Attorney

Exhibit "A"

CAP Master Repayment Contract

DUPLICATE-ORIGINAL

Contract No. 14-06-W-245
Amendment No. 1
B.C. Draft 11/28/88

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

1. PARTIES

The parties to this contract, executed as of this first day of December, 1988, are the United States of America, acting through the Department of the Interior, and the Central Arizona Water Conservation District, a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona.

2. AUTHORITIES

This contract is made pursuant to the:

2.1 Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto.

2.2 Boulder Canyon Project Act, approved December 21, 1928, 45 Stat. 1057, a supplement to the Federal Reclamation Laws.

2.3 Reclamation Project Act of 1939, approved August 4, 1939, 53 Stat. 1187, as amended.

2.4 Colorado River Basin Project Act, approved September 30, 1968, 82 Stat. 885, as amended, a supplement to the Federal Reclamation Laws.

2.5 Arizona Revised Statutes, Section 48-3701 et seq.

3. RECITALS

3.1 The Colorado River Basin Project Act provides, among other things, that for the purposes of furnishing irrigation water and municipal and industrial water supplies to water-deficient areas in 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, consisting of the principal works hereinafter described in Article 6.3.

3.2 Pursuant to the provisions of Arizona Revised Statutes, Section 48-3701 et seq., the Central Arizona Water Conservation District 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, Section 48-3701 et seq.

3.3 On December 15, 1972, the United States and the Contractor entered into a contract entitled "Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), whereby, among other things, the United States agreed to construct the Central Arizona Project and the Contractor agreed to repay the costs of the project properly allocable to the Contractor.

3.4 Subarticle 9.3(b) of said contract provides that the Contractor's repayment obligation shall not exceed $1.2 billion.

3.5 Subarticle 9.3(b) of said contract also provides that if the

Contractor's repayment obligation will exceed $1.2 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation.

3.6 Both parties acknowledge that the Contractor's repayment obligation will exceed $1.2 billion, and have agreed to increase the Contractor's repayment ceiling to a level sufficient to facilitate completion of the project.

4. ARTICLES OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is agreed by and between the parties hereto as follows:

5. DEFINITIONS

When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the terms:

5.1 "Federal Reclamation Laws" or "Reclamation Laws" shall mean the Act of June 17, 1902, 32 Stat. 388, and all acts amendatory thereof or supplementary thereto.

5.2 "Basin Project Act" shall mean the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, as amended, which is a supplement to the Federal Reclamation Laws.

5.3 "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

5.4 "Contracting Officer" shall mean the Secretary or his authorized designee acting in his behalf.

5.5 "Contractor" shall mean the Central Arizona Water

Conservation District, organized pursuant to Arizona Revised Statutes, Section 48-3701 et seq.

5.6 "Service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties of Arizona and such other counties as may hereafter become part of the District, exclusive of any Indian reservation land lying wholly or partly within said Counties.

5.7 "Subcontractor" shall mean any irrigation district, municipality, individual, or any entity which enters into a water service subcontract with the United States and the Contractor in furtherance of the provisions of the Basin Project Act.

5.8 "Central Arizona Project" or "project" shall mean the project and works authorized by Section 301(a) of the Basin Project Act and constructed by the United States pursuant to the provisions of said Act and this contract.

5.9 "Project works" shall mean the principal works described in Section 301(a) of the Basin Project Act, and appurtenances thereto, or as modified pursuant to Article 6.4 hereof, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

5.10 "Water supply system" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt Gila and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

5.11 "Distribution works" shall mean those facilities constructed or financed by the United States under the authorization in Section 309(b) of the Basin Project Act for the primary purpose of

distributing the project water supply within the service area after said project water supply has been transported or delivered through the water supply system.

5.12 "Agricultural water" or "irrigation water" shall mean project water used primarily in the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than 5 acres.

5.13 "Miscellaneous water" shall mean water delivered from the project, or by exchange for project water, for recreational and fish and wildlife purposes at other than project facilities and shall have a lesser priority of use than agricultural water.

5.14 "Municipal and industrial water," herein referred to as "M&I water," shall mean project water other than agricultural or miscellaneous water delivered by means of the project works.

5.15 "Lands not having a recent irrigation history" shall mean, except where otherwise determined by the Secretary for efficiency of subcontractor's operation, lands which the Secretary determines were not irrigated during the period September 30, 1958, to September 30, 1968.

5.16 "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

5.17 "Exchange water" shall mean Colorado River water made available in exchange for or in replacement of existing supplies from surface sources other than the mainstream of the Colorado River.

5.18 "Transferred works" shall mean such facilities of the water supply system or of other construction stages as to which OM&R

responsibility is transferred from the United States to the Operating Agency.

5.19 "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

5.20 "Transfer notice" shall mean a written notice or notices, numbered consecutively, which the Contracting Officer transmits to the Operating Agency and which shall designate:

(a) the transferred works;

(b) items of equipment and supplies transferred to the Operating Agency; and

(c) the date upon which such transfer will be effected.

5.21 "Gila River system waters" shall mean waters of the Gila River and tributaries thereof east of the Yuma-Maricopa County line.

5.22 "Notice of completion" shall mean the notice which the Contracting Officer issues to Contractor to announce the substantial completion of a construction stage. Each such notice of completion shall include the estimated amount of the repayment obligation for the construction stage to which the notice pertains, the date of initiation of repayment for the construction stage and indicate the amount and due date for the first payment for the construction stage.

5.23 "Development Fund" shall mean the separate fund, known as the Lower Colorado River Basin Development Fund, established in the Treasury of the United States pursuant to Section 403(a) of the Basin Project Act.

5.24 "Year" shall mean the period January 1 through the next

succeeding December 31.

5.25 "Contractor's Construction Cost Repayment Obligation," hereinafter referred to as "repayment obligation," shall mean the total amount of all construction costs including related construction claims and interest thereon, OM&R costs during construction, and interest on costs allocated to the M&I water and power functions during construction, of the Central Arizona Project, incurred therefor and as determined by the United States and further described in Article 6.2 hereof, excluding reimbursable costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors, and which is determined by the Secretary, after consultation with the Contractor, to be allocable to and repayable by the Contractor in accordance with the provisions of the Basin Project Act and this contract.

5.26 "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from water contracted for from the Central Arizona Project, but shall not include any water delivered through the project works for ground water recharge purposes.

5.27 "Project water" shall mean (a) all water allocated by the Secretary for project purposes by Federal Register notice dated March 24, 1983, and any subsequent reallocation by the Secretary as contemplated in paragraph 6 of said Federal Register notice, which water is available pursuant to contracts with the Secretary from: (1) the Colorado River; (2) Central Arizona Project dams and reservoirs; and (3) return flows captured by the Secretary for project use; (b) any water

delivered to entities in Arizona, through the project works, as a replacement supply for Cliff Dam; (c) water delivered to water users in Arizona, through the project works, in exchange for water delivered to users in New Mexico from or by means of the project works; and (d) any additional water not included in (a) above, that is required to be delivered by the Secretary through the project, pursuant to the Ak-Chin Water Rights Settlement Act of 1978 (Public Law 95-328), as amended on October 19, 1984 (Public Law 98-530); the Southern Arizona Water Rights Settlement Act of October 12, 1982 (Title III of Public Law 97-293); and, subject to the execution of a settlement agreement by the Contractor providing for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community and to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (Public Law 100-512), up to 22,000 acre-feet annually of Colorado River water to be delivered through the project works in accordance with said settlement agreement and legislation.

5.28 "Indian lands" shall mean the lands within any Indian reservation for which an allocation of project water has or will be made by the Secretary for delivery through project works.

5.29 "Navajo Project" shall mean the interests of the United States in the Navajo Generating Station and the Transmission System, or any replacement thereof, as authorized by Section 303 of the Basin Project Act and as described in contracts entered into pursuant to that Act.

5.30 "Construction stage" shall mean any one of the following: (1) the water supply system; (2) New Waddell and Modified Roosevelt Dams; (3) replacement features or programs for Cliff Dam; (4) Tucson terminal storage; (5) Hooker Dam or suitable alternative; and (6) Buttes Dam.

5.31 "Plan 6" shall mean Plan 6 for the Regulatory Storage Division of the Central Arizona Project as approved by Record of Decision of the Secretary dated April 3, 1984 as amended and supplemented by Records of Decision of the Secretary dated May 20, 1986 (Supplement One) and June 17, 1988 (Supplement Two).

5.32 "Allocable cost" shall mean (a) with respect to the project, the total project cost less (1) the cost of non-Indian distribution works, (2) the cost of the safety of dams component of Plan 6, (3) the cost of Indian distribution systems, (4) the cost of the Colorado River Division and the New Mexico fish hatchery, (5) the cost of cultural resources studies, (6) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (7) the costs of Charleston Dam and San Pedro Aqueduct, (8) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (9) such other costs as determined appropriate by the Contracting Officer; and (b) with respect to each construction stage, the total cost of such stage less that portion of the following costs associated with such stage: (1) the cost of the safety of dams component of Plan 6, (2) the cost of cultural resources studies, (3) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (4) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (5) such other costs as determined appropriate by the Contracting Officer.

5.33 "OM&R Transfer Contract" shall mean the August 5, 1987, contract entitled "Contract Between the United States of America and the

Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities" (Contract No. 7-07-30-W0167), and any amendment or revision thereof.

5.34 "Overall repayment period" shall mean the period of time beginning with initiation of repayment of the first construction stage and ending with final payment of the last construction stage.

5.35 "Plan 6 Funding Agreement" shall mean the April 15, 1986, agreement entitled "Agreement Among the United States, the Central Arizona Water Conservation District, the Flood Control District of Maricopa County, the Salt River Agricultural Improvement and Power District and Salt River Valley Water Users' Association, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, the State of Arizona, and the City of Tucson for Funding of Plan Six Facilities of the Central Arizona Project, Arizona, and for other Purposes," as it may be supplemented or amended.

5.36 "Permanent service" shall mean that water supply service commencing in the year following substantial completion of the water supply system and continuing in perpetuity.

5.37 "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be amended or revised.

5.38 "Project power" shall mean the United States' entitlement to capacity and energy from the Navajo Project.

6. PROJECT CONSTRUCTION

6.1 Agreement of the United States. Subject to the terms and

conditions of this contract and within the limits of the funds made available therefor by Congress, the United States will expend toward the construction of the project, exclusive of interest costs during construction, $832,180,000 based on 1967 cost estimates, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein, or so much of such amount, as in the opinion of the Secretary, is necessary to construct said project, whichever amount is the lesser. The aforementioned amount includes the United States' costs of participation in the Navajo Project.

6.2 Costs of Project.

(a) The estimated construction cost of $832,180,000 for the project, based upon 1967 prices, has been determined as follows:

	$ 1,000's
Main System	
Granite Reef Division	407,740
Orme Division	42,340
Salt-Gila Division	47,170
Tucson Aqueduct (Colorado River source)	46,300
Buttes Dam	35,240
Navajo Project	106,000
Subtotal	684,790
Other Separate Features	
Hooker Dam or suitable alternative	31,730
Charleston Dam and San Pedro Aqueduct (San Pedro River source)	36,420
Subtotal	68,150
Miscellaneous Features	
*Gila River Division	5,250
Indian Distribution System	19,970
Colorado River Division	42,450
Drainage System	11,570
Subtotal	79,240
Total Project	$832,180

*Note: Fish hatchery costs, some of which may be located on the Colorado River.

Provided, however, That (i) the adjustment provisions of Article 6.1 apply

to the total construction costs of the project and not to the costs of the individual line items set out in this Subarticle 6.2(a), and (ii) in accordance with provisions of Article 6.4 herein, the references to the individual line items set out in this Subarticle 6.2(a) are not to be deemed a determination that each of the features referred to in the individual line items will be constructed or that costs will be incurred for each of said individual line items based upon a percentage which the estimated costs for each individual line item bears to the project's total estimated construction costs.

(b) The Central Arizona Project costs incurred by the United States which are to be repaid by Contractor shall include the share allocated to the Contractor of (i) construction costs of the project, (ii) all expenses of whatsoever kind or nature heretofore or hereafter incurred by the United States in connection with, growing out of, or resulting from the construction, and (iii) the OM&R during construction of project works. The aforementioned share of allocated costs shall also include, but shall not be limited to, interest during construction on costs allocated to the M&I water and power functions, the cost of labor, materials, equipment, engineering, legal services, surveys, investigations, property, superintendence, administration, overhead, general expenses, special services, damages of all kinds and character, inspection, repair, and protection of project works and water supply, and the costs of all lands, interests in lands, and rights-of-way acquired by the United States for the project, all as determined by the Secretary.

6.3 Principal Works of the Project. The works and facilities to be constructed under this contract shall consist of the following principal

works:

(a) A system of main conduits and canals, including the Havasu Pumping Plant and a main canal and pumping plants (Granite Reef Aqueduct and pumping plants), for diverting and carrying water from Lake Havasu to the confluence of the Salt and Verde Rivers, which system will have a capacity of 3,000 cubic feet per second;

(b) Salt-Gila Aqueduct and pumping plant;

(c) Tucson Aqueduct and pumping plants;

(d) New Waddell and Modified Roosevelt Dams;

(e) replacement features or programs for Cliff Dam;

(f) Tucson Terminal Storage (if approved by the Secretary);

(g) Buttes Dam and Reservoir;

(h) Hooker Dam and Reservoir or suitable alternative which shall be constructed in such manner as to give effect to the provisions of Section 304(f) of the Basin Project Act;

(i) Charleston Dam and Reservoir and the San Pedro Aqueduct;

(j) related canals, regulating facilities, and electric transmission facilities required for the operation of said principal works;

(k) related water distribution and drainage works; and

(l) appurtenant works.

No works or facilities for the treatment of water are included in the project works to be constructed by the United States. Nothing contained herein shall be construed to indicate the order in which the aforedescribed works will be constructed.

6.4 Changes in Project Works. Should the Secretary, either before or during construction, determine it to be in the best interests of

the project, he may, upon the completion of the studies currently being made or to be made, including land classifications, hydrological, engineering, geological, sedimentation, water supply, and repayment ability, and after consultation with the Contractor, change the location, size, or capacity of any of the project works, or may eliminate works, or add works to those described above, and the Secretary's decision on such changes, eliminations, and additions shall be conclusive.

6.5 Construction Conditions. The United States shall be under no obligation to commence or, having commenced, to continue construction of project works until transfer from the State of Arizona of such State-owned lands or interests therein, in a form acceptable to the Attorney General of the United States, as the Secretary determines is necessary in the construction, operation, or maintenance of the project.

6.6 Annual Work Program. During construction of the project works the Contracting Officer will consult with the Contractor and/or with any subcontractor through or within whose service area project works are to be constructed to achieve maximum coordination between such construction program and the annual programs of any affected subcontractor. Within 30 days following the enactment by Congress and Presidential approval of annual or supplementary appropriation acts and the allotment of funds thereunder for continued construction of the project, the United States will furnish the Contractor with a notice and statement showing the proposed construction program for the balance of the current fiscal year and for the following fiscal year or years. If so requested in writing by the Contractor within 30 days of its receipt of such notice, the Secretary will consult with the Contractor and/or the affected subcontractor with respect

to the proposed program. The action of the Contracting Officer concerning the program after such consultation shall be final.

6.7 Inability of the United States to Complete Project on Basis of Cost Estimates. If construction of the project works shall have been commenced but, prior to completion, the Secretary determines that the cost of constructing the project will exceed the maximum amount to be expended therefor by the United States as provided for in Article 6.1 hereof, the Secretary may after consultation with the Contractor terminate construction and declare the obligations of the United States hereunder with regard to completion of construction of the project to have been fulfilled. If appropriations for the continuance and/or completion of construction in amounts sufficient in the opinion of the Secretary to complete said construction are authorized by Congress and are available, the Secretary shall consult with the Contractor and shall make continuation of construction contingent upon the execution of an amendatory contract with the Contractor wherein the Contractor's maximum repayment obligation is increased so as to cover the increased reimbursable costs as determined by the Secretary; Provided, however, That the Contractor shall not utilize any part of the completed or unfinished project facilities in the absence of written agreement with the Secretary for reimbursement therefor.

7. PROJECT OPERATION, MAINTENANCE, AND REPLACEMENT

7.1 Operation and Maintenance and Water Deliveries by the United States Prior to Completion of Construction. Except as provided in the OM&R Transfer Contract, prior to completion of project works by the United States, as determined and announced to the Contractor in writing by the Secretary, the United States will operate and maintain said project

facilities. The cost of said OM&R allocated to the Contractor shall be included in the Contractor's repayment obligation; Provided, however, That said OM&R cost shall not be included with the project cost ceiling set out in Article 6.1 hereof. During the aforesaid period, project water, if available, may be disposed of by the Secretary at charges which the Secretary determines to be appropriate; Provided, however, That to the extent deemed feasible by the Secretary, preference will be given to subcontractors and Indian lands. Payment for water shall be made in advance by the water user. The places of measurement and delivery of said water shall be established by the Secretary after consultation with the Contractor. Except as provided in the OM&R Transfer Contract, the proceeds accruing from the disposal of such water shall be credited to the Development Fund and applied toward the costs of the project as determined by the Secretary.

7.2 Operation and Maintenance and Water Deliveries after Completion of Construction. Except as provided in the OM&R Transfer Contract and any future agreements for the transfer of OM&R of the project works or portions thereof, upon completion of construction of a construction stage or upon completion of construction of the project, the United States shall operate and maintain such construction stage or the project and shall make project water available to project water users.

8. DELIVERY OF WATER

8.1 Obligation of United States. Subject to the terms, conditions, and provisions set forth herein, the United States will deliver project water to Contractor and, during such periods as it operates and maintains the water supply system, the United States will also transport and

deliver said water to the subcontractors. After transfer of OM&R the United States will make deliveries of Colorado River water to the Operating Agency; deliveries of other project waters will be made pursuant to determinations made by the Secretary.

8.2 Term of Contract. Subject to the terms, conditions, and provisions set forth herein, this contract is for permanent service.

8.3 Conditions Relating to Delivery.

(a) The obligation of the United States to deliver water under this contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, dated September 30, 1968, 82 Stat. 885; the contract between the United States and the State of Arizona, dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of Arizona v. California et al., 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, as now issued or hereafter modified.

(ii) Executive A, Seventy-eighth Congress, Second Session, a treaty between the United States of

America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the water of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty.

(iii) The express understanding and agreement by the Contractor that this contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and the Contractor shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam,

Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to Contractor hereunder.

(iv) The right of the United States temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works whatsoever affecting, utilized or, in the opinion of the Secretary, necessary for delivery of water hereunder, it being understood that so far as feasible the United States will (1) do so during periods of low water demands and (2) give reasonable notice in advance of such temporary discontinuance or reduction.

(b) Delivery of Colorado River water by the United States under this contract shall be charged to the State of Arizona's apportionment under the aforementioned Supreme Court Decree of March 9, 1964, in Arizona v. California and will discharge to that extent the obligation of the United States to deliver water under the aforementioned contract between the United States and the State of Arizona, dated February 9, 1944.

8.4 Delivery Points. Colorado River water to be furnished to the Contractor pursuant to this contract will be delivered by the United States in the Colorado River at the point of diversion from Lake Havasu where the intake structures of the Havasu Pumping Plant are

constructed. Agua Fria and Upper Gila River system waters will be delivered to the Contractor at New Waddell and Buttes Dams, respectively. Delivery points for other project water supplies and for return flows will be determined by the Contracting Officer after consultation with the Contractor and/or the affected subcontractor therefor.

8.5 Measurement.

(a) The quantity of Colorado River water pumped from Lake Havasu for the project shall be measured by means of measuring devices to be installed as part of the project works. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available, estimate the amount of water delivered to the Contractor.

(b) Deliveries of project water to the various subcontractors shall be measured by means of measuring devices to be installed as part of the project works at the points along the various aqueducts at which such water may be diverted for each of said subcontractors, and/or at the points in the various reservoirs formed by the dams constructed as part of the project works at which such water may be diverted for subcontractors and/or at the points where return flow may be delivered. These points of measurement will be established by the Secretary after consultation with Contractor and the affected subcontractor. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available and after consultation with the Contractor and the affected subcontractor, estimate the amount of water delivered to each such subcontractor. The Secretary shall at all times have access over any lands

and rights-of-way of a subcontractor for the purpose of inspecting and checking said measuring devices.

8.6 Responsibility for Distribution of Water after Leaving Water Supply System. Whether or not the United States operates and maintains the project facilities, the United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water after said water has been diverted from the water supply system. At such time as the Operating Agency assumes responsibility for the OM&R of project works, the responsibility for diversion, carriage, and transportation of the water through the water supply system shall be the sole responsibility of the Operating Agency. Responsibility for distribution of water beyond the water supply system shall be that of the subcontractors to whom said water is delivered from the water supply system. The United States, its officers, agents, and employees, shall not be liable for damage or claim of damage of any nature whatsoever for which there is legal responsibility arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water, and each subcontractor shall hold the United States, its officers, agents, and employees, harmless from any and all such claims.

8.7 Quantity of Water to be Delivered.

(a) The Secretary reserves the right to determine that quantity of Colorado River water to be released each year from Lake Mead for use by the Central Arizona Project pursuant to applicable law, which shall include the quantity of water which may be allocated by the Secretary for use on Indian lands.

(b) The quantity of Colorado River water available under

this contract for project purposes shall not exceed the quantity of water available to Arizona under the aforementioned Supreme Court Decree in Arizona v. California and in Arizona's water delivery contract with the United States after first providing for satisfaction of:

(i) present perfected rights and perfected rights described in Article II(D) of the Decree and the rights of other Federal reservations established prior to September 30, 1968; Provided, however, That the quantities of Colorado River water reserved to satisfy the aforesaid rights shall not, except as provided in said Decree, be reduced under any circumstances or for any reason whatsoever including, without limitation, a temporary use permitted by the Secretary by other water users in Arizona, California, or Nevada, of water reserved pursuant to the foregoing but not needed during any calendar year; And provided further, That no rights to the recurrent use of such water shall accrue by reason of said temporary use; and

(ii) the quantities of water provided for in all water delivery contracts between the United States and water users in Arizona as of September 30, 1968.

(c) The quantity of Colorado River water available under this contract for project purposes, including water for use on Indian lands

shall have the same priority as to delivery as the quantities of Colorado River water delivered pursuant to water delivery contracts, Federal reservations of water, and other arrangements between the United States and water users in Arizona entered into subsequent to September 30, 1968, for use of Colorado River water on Federal, State or privately owned lands in Arizona in total quantities not to exceed 164,652 acre-feet of diversions per year; Provided, however, That the Contractor shall hold the United States, its officers, agents, employees, and successors or assigns, harmless as to any and all claims for damages to persons or to property direct or indirect and of whatever nature, arising out of or which may in any manner be connected with the operation and/or effect of this Subarticle.

(d) The limitation on contracting in Subarticle 8.7(c) above shall not apply to contracts with holders of present perfected rights to Colorado River water in Arizona or to the Secretary's order of November 24, 1982, reserving Colorado River water for the Cibola National Wildlife Refuge. Nothing in Subarticle 8.7(c) shall restrict the right of the Secretary under water service contracts referred to in said Subarticle to terminate and/or reduce any entity's entitlement to Colorado River water and to make that entitlement available to other water users in Arizona.

(e) During any year when the subcontractors cannot use any portion of their entitlement to project water, and such water cannot be resold or exchanged in accordance with the terms and conditions of the water service subcontracts, the Contractor shal' have the right in its discretion to resell any or all of such water or to use any or all of such water for ground water recharge purposes, including the subsequent recovery and resale

of such water, subject to Federal law, including but not limited to the Reclamation Reform Act of 1982, State of Arizona law, and such rules and regulations as the Secretary may deem appropriate. Subject to the terms and conditions of water service subcontracts, the water orders of all subcontractors shall be met before any project water is made available to the Contractor under this provision.

8.8 Subcontracts.

(a) The United States shall be a party to subcontracts.

(b) The Secretary and the Contractor shall require in each subcontract that:

(i) unless and until otherwise provided by Congress, water from the Central Arizona Project shall not be made available directly or indirectly for the irrigation of lands not having a recent irrigation history, as determined by the Secretary, except in the case of Indian lands, national wildlife refuges, and, with the approval of the Secretary, State-administered wildlife management areas;

(ii) there be in effect measures, adequate in the judgment of the Secretary and the Contractor, to control expansion of irrigation from aquifers affected by irrigation in the Contractor's service area and to reduce pumping of ground water in the agricultural subcontractors' service areas by the amount of project water received by said agricultural subcontractors;

(iii) the canals and distribution systems through which water is conveyed after its delivery to the subcontractors shall be provided and maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses;

(iv) neither the Secretary, the Contractor nor any subcontractor shall pump or permit others to pump ground water from within the exterior boundaries of the service area of a subcontractor receiving water from the Central Arizona Project for any use outside of said subcontractor's service area unless the Secretary, the Contractor, and such subcontractor shall agree, or shall have previously agreed, that a surplus of ground water exists and that drainage is or was required;

(v) except as otherwise agreed by the Contracting Officer, neither the Contractor nor any subcontractor shall sell or otherwise dispose of or permit the sale or other disposition of any project water, including return flows, for use outside the Contractor's service area;

(vi) irrigation water made available thereunder may be made available by the Secretary for M&I purposes if and to the extent that such water is no longer required by the subcontractor for irrigation purposes and shall be made available in all cases

where lands receiving project water have been converted to municipal and industrial use; Provided, however, That subcontracts effectuating such transfers are subject to the approval of the Secretary and the Contractor, which approval shall not be withheld unreasonably; And provided further, That it shall be deemed unreasonable for the Secretary or the Contractor to withhold such approval on the basis that the right to convert from irrigation to M&I use for a specific development could better be exercised in some other subcontractor's service area. The water so converted from irrigation to M&I purposes will be delivered with the same priority and at the same rate per acre-foot as other M&I water. Likewise, subcontracts for furnishing water for M&I purposes, including, but not limited to, ground water recharge to the extent ground water recharge is consistent with Arizona law, shall provide that, if water to be delivered thereunder is not presently required for such purposes, such water may be made available by the Secretary to other users; Provided, further, That the subcontractor shall be relieved of its payment obligation under its subcontract only to the extent of the amount paid by such other users;

(vii) the acreage limitation provisions of Reclamation Laws shall apply solely to agricultural water service;

(viii) except as specifically provided therein, it shall be the provisions of this contract which shall be controlling in the event of any inconsistency between this contract and any subcontract;

(ix) the subcontractor shall levy all necessary assessments, tolls, and other charges and shall use all of the authority and resources available to the subcontractor to collect the same in order that the subcontractor may meet its obligations thereunder to make in full all payments required under said subcontract on or before the date such payments become due and to meet other obligations under the subcontracts;

(x) the subcontractor establish, maintain, and provide the United States and the Contractor with land, water use, and crop census records.

8.9 Shortages. As provided in Section 301(b) of the Basin Project Act, Article II(B)(3) of the Decree of the Supreme Court of the United States in Arizona v. California, 376 U.S. 340, dated March 9, 1964, shall be so administered that in any year in which, as determined by the Secretary, there is insufficient mainstream Colorado River water available for release to satisfy the annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada, diversions from the mainstream of the

Colorado River for the Central Arizona Project and for other uses in Arizona under contracts or other agreements with the United States executed subsequent to September 30, 1968, shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under contracts existing as of September 30, 1968, with the United States by diversion works heretofore constructed, and by other Federal reservations in California of 4,400,000 acre-feet of Colorado River water, and by users of the same character in Arizona and Nevada. Water users in the State of Nevada shall not be required to bear shortages in any proportion greater than would have been imposed in the absence of said Section 301(b), nor shall said Section affect the relative priorities, among themselves, of water users in Arizona, California, and Nevada which are senior to diversions for the Central Arizona Project, or amend any provisions of said Decree. The aforesaid limitation stated in Section 301(b) shall not apply so long as the Secretary shall determine and proclaim that means are available and in operation which augment the water supply of the Colorado River system in such quantity as to make sufficient Colorado River mainstream water available for release to satisfy annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada.

8.10 Rate of Diversions of Colorado River Water. Subject to (a) the first proviso in Section 301(a) of the Basin Project Act, (b) the provisions of Subarticle 10.6(b) hereof, and (c) the provisions of Subarticle 8.7(a) hereof, any capacity in the Granite Reef Aqueduct in excess of 2,500 cubic feet per second may be utilized in the operations of

the project so as to maximize project benefits; Provided, however, That the use of such capacity shall not result in the annual diversion of a quantity of water in excess of the project's legal entitlement under the Basin Project Act.

8.11 Priority in Case of Shortage.

(a) Subject to the provisions of Section 304(e) of the Basin Project Act and the Secretary's allocation decisions published in the Federal Register on December 10, 1980, and March 24, 1983, any project water as defined in Subarticle 5.27(a) hereof, furnished through project facilities shall, in the event of shortages thereof, be reduced pro rata until exhausted, first for miscellaneous uses and next for agricultural uses, before such project water furnished for M&I uses is reduced. Thereafter, such project water for M&I uses will be reduced pro rata among all M&I water users. Each subcontract or other water delivery arrangement entered into pursuant to this contract shall so provide. This article shall not apply to Indian uses; Provided, however, That the relative priorities between Indian and non-Indian uses shall be as determined by the Secretary. Notwithstanding the provisions of this Subarticle, project water made available as a result of construction and operation of modifications to Roosevelt Dam as part of Plan 6 shall be distributed as provided in the Plan 6 Funding Agreement, and shall not be subject to reduction in the event of shortages of other project water supplies.

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

8.12 No Guarantee of Availability of Water. The United States

assumes no responsibility with respect to the quantity of water available for delivery pursuant to this contract. In no event shall the United States, its officers, agents, or employees, be liable for any damages, direct or indirect, of whatsoever nature, arising out of or in any way connected with any suspension or reduction in the delivery of water pursuant to this contract or with any shortage in the quantity of water available for delivery hereunder or to any subcontractor for any cause whatsoever including, but not limited to, drought, delay in the construction of the Navajo Project, the failure of the Navajo Project to be completed, or the lack of power for pumping.

8.13 Secretarial Control of Return Flow.

(a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of the Contractor as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for project use return flows within the boundaries of Contractor if in his judgment such return flow is not being put to a beneficial use. Any subcontractor may sell its return flow; Provided, however, That except as otherwise agreed by the Contracting Officer, such return flow may not be sold for use outside the Contractor's exterior boundaries; And provided further, That if the price received for such return flow is higher than the price paid for such project water, the amount of the excess price shall be paid by such subcontractor to the Contractor for application against the Contractor's repayment obligation to the United States.

(b) Any return flow captured by the United States and determined by the Secretary to be suitable and available for use on lands

within the service area and/or by any subcontractor therein may be delivered by the United States to a subcontractor as a part of the water supply for which the subcontractor contracts hereunder and such water shall be accounted and paid for pursuant to the provisions hereof.

8.14 Water and Air Pollution Control. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

8.15 Quality of Water. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of project water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer or the Operating Agency. Neither the United States nor the Operating Agency warrants the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

8.16 Exchange Water. Where the Secretary determines that a subcontractor is physically able to receive Colorado River mainstream water in exchange for or in replacement of existing supplies of surface water from sources other than the Colorado River to provide water supplies for users upstream from New Waddell, Modified Roosevelt and Buttes Dams, the Secretary may require that said subcontractor agree to accept said mainstream water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act.

8.17 Rights Reserved to the United States to Have Water Carried by Project Facilities. As a condition to the construction of project facilities and the delivery of water hereunder, the Contractor agrees that all project facilities will be available for the diversion, transportation, and carriage of water for Indian and non-Indian uses pursuant to arrangements or contracts therefor entered into on their behalf with the Secretary. In the event the responsibility for the OM&R of project facilities is transferred to and assumed by the Operating Agency, such transfer shall be subject to the condition that the Operating Agency shall divert, transport, and carry such water for such uses pursuant to the provisions of the aforesaid arrangements or contracts; Provided, however, That the aforesaid arrangements or contracts will include provisions for the payment of applicable construction costs and OM&R costs in accordance with Articles 9.3 and 9.6 of this contract.

8.18 Wheeling Non-Project Water. After taking into consideration the water delivery requirements of contracts for project water service and subject to availability of project capacity, non-project water may be wheeled through project facilities pursuant to wheeling agreements between the Contractor and the entity desiring to use project facilities for wheeling purposes. All such agreements shall be subject to the approval of the Contracting Officer who shall consider, among other things, the impact that the wheeling of such non-project water will have on the quality of project water. The Contractor and the Contracting Officer shall jointly develop a standard form of wheeling agreement including the rate structure for wheeling non-project water. All wheeling charges shall be paid to the Contractor by the entity contracting for the wheeling of non-project water.

The Contractor shall be entitled to retain revenues from wheeling charges sufficient to cover all OM&R costs associated with wheeling such non-project water, plus an administrative charge to be jointly determined by the Contractor and the Contracting Officer. All revenues from wheeling charges in excess of the OM&R costs and administrative charges shall be remitted by the Contractor to the Contracting Officer and deposited into the Development Fund.

8.19 Use of Project Power to Wheel Non-Project Water. If the energy requirements necessary for the pumping of project water are met and subject to the requirements of the Navajo Power Marketing Plan published in the Federal Register on December 21, 1987, project power may be used to wheel non-project water through project facilities under such conditions of use, including amounts, times of use, losses, costs, and other conditions as are established by the Contractor and approved by the Contracting Officer.

9. PAYMENT OF PROJECT COSTS ALLOCATED TO CONTRACTOR

9.1 Allocation of Construction Costs.

(a) Upon completion of each construction stage, the Contracting Officer will allocate costs to the various project purposes using the separable costs-remaining benefits procedure.

(b) For repayment purposes the reimbursable cost allocated to irrigation and M&I water by the separable costs-remaining benefits procedure will be combined and will hereinafter be termed the "water supply allocation." Upon completion of each construction stage, and at the periodic intervals specified in Subarticle 9.3(d), suballocation of the water supply allocation will be made to the irrigation and M&I water functions proportional to the water estimated to be used for each purpose

during the repayment period of each construction stage. The cost thus suballocated to the irrigation function will hereinafter be termed the "interest-free allocation." The cost thus suballocated to the M&I water function shall be added to the cost allocated to the commercial power function, plus interest during construction for both, and the sum will hereinafter be termed the "interest-bearing allocation."

(c) During construction, simple interest at the rate of 3.342 percent per annum shall be charged on costs allocated to the interest-bearing function as adjusted by the Secretary (i.e., net disbursements reduced by contract holdbacks, revenues applied to construction cost, and nonreimbursable expenses financed from construction funds). The total amount of all interest thus accumulated through the construction period prior to the date of completion of each construction stage shall be added to and become part of the actual construction cost of each construction stage. Interest during construction shall not accrue during any period in which construction is deferred or postponed by the United States as a result of a national emergency, as determined by the Secretary, if authority to forego such interest exists or is made available to the Secretary.

9.2 Repayment Concepts.

(a) Costs suballocated to non-Indian irrigation water will be paid by the subcontractors to the Contractor on the basis of their ability to pay as determined by the Secretary.

(b) Costs allocated to commercial power and costs suballocated to M&I water use shall be combined and repaid with interest at a rate of 3.342 percent per annum on the unpaid balance.

(c) Reimbursable costs allocated to recreation and fish

and wildlife are anticipated to be covered by a separate contract and repaid by the beneficiaries thereof.

(d) Repayment of costs allocated to irrigation of Indian lands shall be governed by the provisions of Section 402 of the Basin Project Act.

(e) Repayment of the project will occur by construction stages, with each stage having a separate 50-year repayment schedule. Upon completion of each cost allocation study referred to in Subarticle 9.1(a), subsequent to the initial study associated with the first construction stage, the Contractor's repayment obligation and the obligation allocated to each construction stage will be adjusted based on the latest cost allocation study, and the Contractor will be provided with a revised repayment schedule for the project and each construction stage. The Contracting Officer will adjust previous principal and interest payments made by the Contractor to reflect the new repayment schedule. For each year where an adjustment in payments is necessary, there will be an over or underpayment which will accrue with interest at the rate of 3.342 percent per annum (compounded annually) to the adjustment date. If the adjustment indicates that the Contractor overpaid principal and interest, the Contractor shall be entitled to a credit against its next payments to the United States. Conversely, if the Contractor owes additional principal and interest to the United States, such amount shall be paid to the United States by the Contractor within 12 months of receipt of a statement therefor from the Contracting Officer. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

9.3 Contractor's Construction Cost Repayment Obligation.

(a) The Contractor's repayment obligation shall consist of the total cost allocated to the water supply and power functions plus OM&R during construction and interest during construction on costs allocated to the M&I water and power functions, but shall not include costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors. Such entities shall include but not be limited to Indian tribes and councils in central Arizona receiving project water and the New Mexico recipients of water service from Hooker Dam or suitable alternative. The costs to be excluded shall be calculated as follows:

(i) Costs excluded from the Contractor's repayment obligation for New Mexico water service shall be determined by multiplying the project costs allocated to the water supply function by the ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to water users in Arizona in exchange for water delivered to users in New Mexico from or by means of project works, by the total quantity of Colorado River water projected to be delivered by the project throughout the overall repayment period.

(ii) The amount of other project costs which shall be excluded from the Contractor's repayment obligation shall be determined by multiplying the

project costs allocated to the water supply function by a ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to entities other than the Contractor, the subcontractors, and those users in New Mexico to whom water has been made available through the construction of Hooker Dam or suitable alternative by the total quantity of project water projected to be delivered throughout the overall repayment period; Provided, That project water projected to be delivered to such users will be computed based on an assumption of full development not later than the year 2005.

(b) The costs determined under Subarticles 9.3(a)(i) and (ii) above shall be subtracted from the water supply costs obtained from the separable costs-remaining benefits procedure to determine the Contractor's water supply costs. The Contracting Officer shall suballocate the Contractor's water supply costs to each of the construction stages based on the ratios obtained by dividing the allocable cost of the construction stage by the allocable cost of the project (see Operation 1, Exhibit "A"). The water supply costs assigned to each construction stage are then further suballocated between irrigation and M&I water use in proportion to projected total water deliveries to each function over the 50-year repayment period of each construction stage (Operation 2, Exhibit "A"). The summarization of the suballocations to each construction stage determines the total water

supply cost to be assigned to irrigation and M&I water use (Operation 3, Exhibit "A"). To determine the Contractor's repayment obligation, the Contractor's water supply suballocation to irrigation and M&I water uses, and the power allocation from the separable costs-remaining benefits procedure, shall each be adjusted for any revenues received by the United States prior to the notice(s) of completion and for any contributions received by the United States under the Plan 6 Funding Agreement for the features constructed in that stage, and for the 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and pumping plants (see Article 9.7) to determine the net amount of each function assigned to the Contractor (Operation 4, Exhibit "A"). The Contractor's repayment obligation shall be the summation of the net amount for each function.

(c) Once the Contractor's estimated or final repayment obligation has been determined by the Contracting Officer, the obligation shall be allocated to each construction stage based on the ratio obtained by dividing the allocable cost of each construction stage by the allocable cost of the project. Each construction stage will have a separate 50-year repayment period. The repayment obligation for each stage will be divided into interest-bearing and interest-free components. The interest-free component shall be the amount allocable to irrigation purposes for the stage. The interest-bearing component will be the amount obtained by subtracting the irrigation allocation for the stage from the obligation for the stage. The principal payments for each stage shall be determined by applying the percentages in Subarticle 9.3(f) to the repayment obligation for each stage. The total payment for each stage for any year shall be equal to the principal payment plus interest at the rate of 3.342 percent

per annum on the unpaid interest-bearing component of the repayment obligation for each stage. For the water supply system, the portion of each principal payment which is made by the Contractor from irrigation revenues received by the Contractor each year will be used by the United States to reduce the interest-free obligation. The remaining portion of the principal payments made by the Contractor each year for the water supply system will be used by the United States to reduce the interest-bearing obligation, and once the interest-bearing obligation has been retired, the entire principal payment made by the Contractor will be applied by the United States toward the interest-free obligation. For the other construction stages, the entire principal payment made by the Contractor each year for such stages will be applied by the United States to reduce the interest-bearing obligation first, and once such obligation has been retired, to reduce the interest-free obligation.

(d) At 7-year intervals following the determination of the Contractor's repayment obligation for the water supply system, or at more frequent intervals if it becomes apparent to the Contracting Officer that a significant change in water use has or will occur, until such time as the interest-bearing obligation for each construction stage has been repaid, the Contracting Officer will re-estimate the proportions of total water deliveries to irrigation and M&I water use over the 50-year repayment period for each stage. At such intervals, the Contracting Officer will adjust the original interest-bearing and interest-free allocation for each stage based on the new estimates and recalculate all preceding interest payments. Differences between amounts owed and amounts paid by the Contractor shall be adjusted by the Contracting Officer, who shall apply a credit against the

Contractor's next payment due or notify the Contractor of the additional amount due, as the case may be. All such adjustments shall include interest at the rate of 3.342 percent per annum (compounded annually). Any additional payments required from the Contractor shall be made within 12 months of the Contractor's receipt of a statement from the Contracting Officer therefor. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

(e) The Contracting Officer will notify the Contractor of (i) its estimated repayment obligation when construction of the first construction stage is substantially complete and upon completion of each subsequent construction stage, and (ii) the actual repayment obligation when the final construction stage has been completed, as determined by the Contracting Officer. In the event that the project ultimately consists only of the water supply system, New Waddell Dam, and Modified Roosevelt Dam, the Contractor's actual repayment obligation shall be limited to $2.0 billion. If prior to completion of construction of such features the Contracting Officer determines that the Contractor's repayment obligation for such features will exceed $2.0 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation. If construction of any other construction stage will result in an increase in the Contractor's repayment obligation by an amount equal to or less than the respective amount identified in Exhibit "B," which is attached hereto and made part of this contract, the Contractor's repayment ceiling may, after consultation with the Contractor, be increased by the

Contracting Officer by an amount equal to or less than the respective amount identified in Exhibit "B" by written notice thereof from the Contracting Officer to the Contractor. If construction of such other construction stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B," the Contracting Officer shall consult with the Contractor and the Contractor and the Contracting Officer shall agree upon one of the following courses of action prior to initiation of construction of such construction stage: (1) that additional repayment ceiling be made available from other construction stages, in which event the Contractor's repayment ceiling will be increased to the agreed-to amount by written notice from the Contracting Officer to the Contractor; or (2) that this contract be renegotiated to increase the Contractor's repayment ceiling; Provided, That these courses of action shall also apply in the event that, prior to completion of construction of such stage, the Contracting Officer determines that the construction of such stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B."

(f) Annual percentages of the repayment obligation for each construction stage shall be those set out in the following schedule or any revision thereof mutually agreed upon:

Repayment Year	Percent of Repayment Obligation (Annual)
1-7	1.0
8-14	1.3
15-21	1.6
22-28	2.0
29-35	2.6
36-42	2.7
43-49	2.7
50	2.7

(g) In the event that the Secretary contracts for delivery of non-project water under the provisions of Article 10.1, capital charges associated with such delivery shall be calculated, charged, and utilized in the same manner as capital charges deposited in the Development Fund pursuant to Article 8.18.

9.4 Payment of Contractor's Construction Cost Repayment Obligation.

(a) The Contractor shall make annual payments to the United States, to be credited to the Development Fund, which shall be sufficient, when combined with accruals from the other sources described in Section 403(f) of the Basin Project Act, the Hoover Power Plant Act of 1984, and other miscellaneous revenues, including but not limited to net wheeling charges, to effect repayment of the repayment obligation for each construction stage within a period of not more than 50 years beginning with the year following substantial completion of each construction stage. The Contractor's first payment shall be due on or before January 15 of the year following the year in which the Secretary announces the substantial completion of each construction stage. Annual payments thereafter shall be due on or before January 15 of each following year.

(b) The Contractor agrees to make annual payments calculated by the Secretary as follows:

(i) Calculate the annual principal payments required by the schedule in Subarticle 9.3(f) or any revision thereof for each construction stage.

(ii) Add to (i) the annual interest, at 3.342 percent, on the unpaid balance of the interest-bearing

allocation for each construction stage.

(iii) Determine the total amount of all interest and principal payments due for all construction stages.

(iv) Subtract therefrom the revenues estimated to be available from the Development Fund anticipating a zero balance at the end of each year in the Development Fund.

(v) Make adjustments for differences between estimated and actual revenues for the preceding year.

(c) On or before each December 15, beginning with December 15 of the year in which the Secretary notifies the Contractor of the substantial completion of the first construction stage, the Secretary will notify the Contractor of the amount of the annual payment due on the following January 15, which has been determined by the Secretary on the basis of the aforesaid calculation.

(d) The Contractor may make additional payments on the repayment obligation at any time subject to such terms and conditions as may be agreed upon by the Contractor and the Contracting Officer; Provided, however, That all interest due is paid at the same time, whereupon appropriate adjustments in the schedule of future payments will be made by the Secretary, who shall as promptly as possible give the Contractor written notice of the adjusted repayment schedule.

(e) It is understood and agreed that the Contractor shall be obligated for the payments set forth in Subarticle 9.4(a) hereof and that regardless of the delinquency or default in payment of any charges

due to the Contractor from any subcontractor, or a diminution in the water supply available to the Contractor, or regardless of any other reason, the Contractor shall complete repayment of each construction stage within a 50-year period beginning in the year following the announcement by the Secretary of substantial completion of such construction stage.

9.5 Commercial Power Rates. The Secretary will, consistent with applicable law, periodically review and provide for appropriate adjustments in the rates established for the sales of power and energy, revenues from which contribute to the Development Fund.

9.6 Other Costs Borne by the Contractor.

(a) In addition to the payments provided for in Article 9.4 hereof, and subject to the provisions of Subarticle 9.6(d) hereof, during such periods as the United States operates and maintains completed construction stages, the Contractor shall make advance payments for OM&R costs incurred by the United States. The United States will furnish the Contractor with an estimate in writing at least 6 months prior to substantial completion of construction of the water supply system, of the OM&R cost due from the Contractor to the end of the then current year, together with an estimate of such cost for the calendar year immediately following. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer, the Contractor shall advance to the United States the payments for the estimated OM&R cost to the end of the then current year and without further notice or demand shall on December 15 of the then current year and on June 15 of the following year advance to the United States in equal semiannual installments the Contractor's share of the estimated cost, including supervision and

administrative expense for the OM&R of the water supply system. Advance payments shall be made in subsequent years by the Contractor to the United States on the basis of estimates to be furnished by the United States on or before November 15 preceding said subsequent year and the advances of said payments shall be due and payable in equal semiannual payments on the following December 15 and June 15. Said OM&R costs are the total annual OM&R costs of completed construction stages which are allocated to the irrigation and M&I water supply functions less (i) the costs described in Subarticle 9.6(c) hereof, and (ii) an amount determined by multiplying the total of said annual costs by the ratio obtained by dividing the estimated amount of project water projected to be delivered in the subsequent year to entities other than the Contractor, the subcontractors, and those entities in New Mexico to which project water will be made available from Hooker Dam or suitable alternative, by the total amount of project water estimated to be delivered for use in that year.

(b) Differences between actual OM&R costs and the estimated costs shall be determined by the Contracting Officer and shall be adjusted in next succeeding estimates; Provided, however, That if in the opinion of the Contracting Officer the amounts advanced by the Contractor for any year are likely to be insufficient to pay the above-mentioned OM&R costs during such year, additional and sufficient sums of money shall be paid forthwith by the Contractor to the United States upon notice thereof and demand therefor by the Contracting Officer; Provided, further, That the United States will give Contractor reasonable notice in advance of any such deficiency.

(c) The Contractor's obligation to pay said OM&R costs

of completed construction stages will be reduced to the extent that project water is made available for use in New Mexico following completion of Hooker Dam or suitable alternative. Said reduction will be in the proportion which the quantity of project water projected to be delivered to water users in Arizona, in exchange for Gila River system waters delivered to water users in New Mexico from or by means of project works, bears to the total quantity of Colorado River water projected to be delivered to the project that year.

(d) In the event that responsibility for OM&R of project facilities is transferred to and assumed by the Contractor, the Contractor shall be relieved of the obligation to make OM&R payments associated with such facilities under Subarticle 9.6(a) of this contract. In that event, the United States shall pay or provide for payment of OM&R costs associated with delivery of water to entities other than the Contractor and the subcontractors. Such costs shall be computed in accordance with Subarticle 9.6(a) of this contract. If the Contractor does not receive payment in advance for such costs, the Contractor shall have no obligation to deliver such water.

(e) During the Hoover Dam cost-repayment period, the Contractor shall pay to the United States the sum of $0.25 for each acre-foot of water pumped from Lake Havasu for miscellaneous and M&I water purposes as determined by the Contracting Officer. The quantity of water pumped for such purposes will be determined by the Contracting Officer at the end of each calendar year and the Contractor notified of the amount due by March 1 of each subsequent year. Payment shall be due on May 1 following notification. Said payment shall be credited to the Colorado River Dam Fund

established by Section 2 of the Boulder Canyon Project Act.

9.7 Repayment of Costs of Excess Capacity in Granite Reef Aqueduct. The costs of providing any capacity in the Granite Reef Aqueduct and pumping plants in excess of 2,500 cubic feet per second shall be repaid by Contractor from funds available to Arizona pursuant to the provisions of Section 403(f) of the Basin Project Act, or by funds from sources other than the Development Fund.

9.8 Ad Valorem Taxes, Assessments, Tolls, and Other Charges. Within the legal limits available to it, the Contractor shall levy ad valorem taxes upon the taxable property within the service area of the Contractor at rates determined necessary by the Contractor to raise funds which, together with the revenues from the sale of water and such financial assistance from the Development Fund as the Secretary determines is available therefor, are sufficient to meet the obligations of the Contractor to make in full all payments to the United States on or before the date such payments become due and to meet its other obligations under this contract.

9.9 Continuation of Payments After Project Payout. Following payment to the United States of the Contractor's final payment for the last construction stage, the Contractor shall continue to make annual payments to the United States to be credited to the Development Fund in amounts equal to the average annual principal payment for the project during the overall repayment period. In the event that no augmentation project, as contemplated in the Basin Project Act, has been authorized or is under active consideration by the Congress at the time project construction costs have been repaid in full, payments under this formula will be not required; Provided, however, That payments will commence after repayment of the

project costs pursuant to the formula, or any adjustment thereof agreed to by the parties, at such time as an augmentation project is authorized by Congress and the costs thereof allocated to the Contractor are determined by the Secretary.

9.10 Defaults.

(a) The Contractor shall pay a penalty on payments, installments or charges which become delinquent, computed at the rate of 1 percent per month on the amount of such delinquent payments, installments, or charges from and after the date when the same become due until paid.

(b) No water shall be furnished to the Contractor during any period in which the Contractor may be in arrears more than 12 months in the payments to the United States required by Article 9.4 hereof.

(c) All rights of action for breach of this contract are reserved to the United States as provided by Federal law.

10. GENERAL PROVISIONS

10.1 Other Contracts. The Secretary reserves the right to contract directly with other water using entities concerning water supply through project facilities. In the event this occurs, the provisions of Article 8.17 hereof shall be applicable.

10.2 Title to Project Works. Title to all water supply system works and all project facilities constructed pursuant to the Basin Project Act and this contract shall be and remain in the United States until otherwise provided by Congress.

10.3 Reserve Funds.

(a) (1) Commencing with notice of transfer of OM&R for the Granite Reef Aqueduct, including the Havasu Pumping Plant, the Contractor

shall accumulate and maintain an emergency OM&R reserve fund, which the Contractor shall keep available to meet costs incurred during periods of interruption of water service.

(ii) The Contractor shall accumulate the reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $400,000 in any year in which the fund balance is less than $4,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for such purposes as those identified in Subarticle 10.3(a)(iv) hereof. Such annual deposits and the accumulation of interest and dividends to the reserve fund shall continue until $4,000,000 is accumulated. Interest and dividends accruing to fund balances shall be added to the fund in any year when the fund balance is greater than $4,000,000; Provided, That in no event shall the fund be increased to an amount greater than the actual amount of fixed OM&R costs for the preceding year as mutually determined by the Contractor and the Contracting Officer. Any balance in the fund in excess of the amount of fixed OM&R costs for the previous year shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted in consideration of the risk and uncertainty stemming from the size and complexity of the project, the size of the annual OM&R budget, additions to, deletions from, or changes in project works, or OM&R costs not

contemplated when this contract was executed.

(iv) The Contractor may make expenditures from such reserve fund only for meeting unforeseen and extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs (in situations where recurrence of severe operation and maintenance problems can be avoided or eliminated). Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) During any period in which any of the project works are operated and maintained by the United States, the reserve fund shall be available for like use by the United States.

(vi) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement indicating the principal and accumulated interest in the emergency OM&R reserve fund as of December 31 of the preceding year.

(b) (i) No later than 1 year following the Contractor's last construction advance under the Plan 6 Funding Agreement, the Contractor shall accumulate and maintain a repayment reserve fund to help assure payments to the United States under this contract.

(ii) The Contractor shall accumulate such reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $4,000,000 in any year in which the fund balance is less than $40,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for the

purpose for which it was established. Such annual deposits and the accumulation of interest to the reserve fund shall continue until $40,000,000 is accumulated. Any balance in the fund in excess of $40,000,000 shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted.

(iv) Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement of the principal and accumulated interest in the repayment reserve fund as of December 31 of the preceding year.

10.4 Recreational Use of Water Facilities.

(a) The enhancement of recreational opportunities in connection with the project works authorized pursuant to Title III of the Basin Project Act shall be in accordance with the provisions of the Federal Water Project Recreation Act, 79 Stat. 213, dated July 9, 1965, except as provided in Subarticle 10.4(b) hereof.

(b) Recreational development at Orme Dam and Reservoir shall be governed by the provisions of Section 302(d) of the Basin Project Act.

10.5 Confirmation of Contract.

(a) The Contractor, after the execution of this contract,

shall promptly seek to secure a decree of a court of competent jurisdiction of the State of Arizona confirming the execution of this contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor. This contract shall not be binding on the United States or the Contractor until such final decree has been entered.

(b) This contract shall be indivisible for purposes of validation and shall not be binding on the United States or the Contractor unless validated pursuant to the provisions of Subarticle 10.5(a) hereof in each and all of its terms and conditions.

10.6 Rules, Regulations, and Determinations.

(a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Reclamation Law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation Law.

(b) The Contracting Officer, after an opportunity has been offered to the Contractor for consultation, shall have the right to make rules, regulations, and determinations consistent with the provisions of this contract, the laws of the United States and the State of Arizona, including, without limitation, rules, regulations, and determinations relative to maximizing project benefits from pumping from Lake Havasu, the rate and schedule of pumping therefrom and the rate and schedule of pumping at the Granite Reef pumping plants, to add to or modify said rules, regulations, and determinations as may be deemed proper and necessary to

carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The Contractor and each subcontractor shall observe such rules, regulations, and determinations and each subcontract shall so provide.

(c) Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor and shall be conclusive upon the parties.

10.7 Books, Records, and Reports. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: the Contractor's financial transactions, water supply data, project operation, maintenance and replacement logs, project land and right-of-way use agreements, and other matters specifically relating to this contract that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

10.8 Notices. Any notice, demand, or request authorized or

required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States, when mailed, postage prepaid, or delivered to the General Manager of the Contractor, 23636 North 7th Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

10.9 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

10.10 Changes in Contractor's Organization. While this contract is in effect, no change shall be made in the Contractor's organization, by exclusion of lands, by dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written consent; Provided, however, That approval is hereby given to the inclusion of other counties as part of Contractor's service area, except, however, that the United States shall not be required, under this contract, to construct project facilities to serve lands within said additional counties.

10.11 Assignment Limited--Successors and Assigns Obligated. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this

contract or any part or interest therein shall be valid until approved in writing by the Contracting Officer.

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

10.13 Equal Opportunity. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment

without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Contracting Officer, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

10.14 Compliance With Civil Rights Laws and Regulations.

(a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures

necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

10.15 Officials Not to Benefit. No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

11. STATUS OF DECEMBER 15, 1972 CONTRACT

Upon judicial confirmation of this contract, the December 15, 1972 contract entitled "Contract Between the United States and the Central Arizona Water Conservation District For Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), shall be superseded and replaced by this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
Assistant Secretary-Water and Science
Department of the Interior

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

ATTEST:

_____
Secretary

By _____
President

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 1 SUBALLOCATION OF CONTRACTOR'S WATER SUPPLY COSTS TO CONSTRUCTION STAGES:

Construction Stage	Allocable Cost ($M)	Percentage	Water Supply Cost ($M)
Water Supply System	1,500	71%	1,280
New Waddell	300	14%	256
Cliff Alternative	100	5%	85
Tucson Term. Storage	60	3%	51
Hooker Alternative	50	2%	43
Buttes	100	5%	85
Total	2,110	100%	1,800

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 2 SUBALLOCATION OF WATER SUPPLY COST:

Construction Stage	Allocable Cost ($M) Construction	IDC	Water Distribution (%) Irrigation	M&I
Water Supply System	1,280	200	58%	42%
New Waddell	256	40	54%	46%
Cliff Alternative	85	10	54%	46%
Tucson Term. Storage	51	10	53%	47%
Hooker Alternative	43	10	50%	50%
Buttes	85	10	50%	50%
Total	1,800	280	100%	

	Construction Cost Distribution ($M) Irrigation	M&I	IDC Cost Distribution ($M) Irrigation	M&I
Water Supply System	742	538	116	84
New Waddell	138	118	22	18
Cliff Alternative	46	39	5	5
Tucson Term. Storage	27	24	5	5
Hooker Alternative	21	21	5	5
Buttes	43	43	5	5
Total	1,017	783	158	122

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 3 DETERMINATION OF TOTAL WATER SUPPLY COST:

	Total Cost Distribution ($M)		
	Irrigation	M&I	Total
Water Supply System	742	622	1,364
New Waddell	138	136	274
Cliff Alternative	46	44	90
Tucson Term. Storage	27	29	56
Hooker Alternative	21	26	47
Buttes	43	48	91
Total	1,017	905	1,922

Irrigation = Irrigation construction cost
M&I = M&I construction cost + M&I IDC

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 4 ADJUSTMENTS TO ALLOCATED COST:

	Irrigation Cost ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)	M&I ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)
Water Supply System	742	-4		33	622	10		32
New Waddell	138		-45		136		-135	
Cliff Alternative	46				44		-30	
Tucson Term. Storage	27				29			
Hooker Alternative	21				26			
Buttes	43				48			
Total	1,017	-4	-45	33	905	10	-165	32

	Power Cost ($M)	Interim Operations ($M)	Total ($M)
Water Supply System	328	-100	1,663
New Waddell	61		155
Cliff Alternative	20		80
Tucson Term. Storage	12		68
Hooker Alternative	9		56
Buttes	19		110
Total	449	-100	2,132

EXHIBIT "B"

CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD) REPAYMENT CEILING (Billions of Dollars)

		Remaining Potential Stages				
	Water Supply System, New Waddell, and modified Roosevelt Dams	Tucson Terminal Storage	Cliff Dam Alternative	Hooker Dam Alternative	Buttes Dam	Total
Amount allocable to CAWCD repayment ceiling based on October 1988 prices.	$1.681	$.058	$.060	$.035	$.100	$.253
Inflation (4%) on features remaining to be completed, plus an amount for unforeseen contingencies (.82 of the inflation component)[1]	.100	.032	.035	.047	.133	$.247
Additional costs which could be allocated to CAWCD if the Gila River Indian Community does not take CAP water	.259	----	----	----	----	----
	----	----	----	----	----	----
Total	$2.040	$.090	$.095	$.082	$.233	$.500
Rounded	$2.000					$.500

[1] Inflation calculations based on the assumption that Tucson terminal storage and the Cliff Dam alternative are completed in 1995, and that the Hooker Dam alternative and Buttes Dam are completed in 2002.

Exhibit "B"

Assignment among RWCD, CAWCD and The United States
(See Exhibit "12.3." to Agreement)

EXHIBIT "12.3"

RWCD ASSIGNMENT TO CITIES

ASSIGNMENT

THIS AGREEMENT, dated as of February 12, 1988, is made and entered into by and among the United States of America acting through the Secretary of the Interior, the Central Arizona Water Conservation District, the Roosevelt Water Conservation District, the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa and Phoenix, and the Arizona Town of Gilbert.

R E C I T A L S

A. The United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members.

B. The foregoing settlement agreement requires the assignment by the Roosevelt Water Conservation District to the Cities and Town participating in the settlement of a portion of the agricultural water supply available to Roosevelt Water Conservation District from the Central Arizona Project.

C. The settlement agreement further requires the Secretary of the Interior, in certain events, to make available to the Cities and Town participating in the settlement a portion of the

agricultural water supply otherwise available from the Central Arizona Project.

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix and the Town of Gilbert.

(b) "City" shall mean any one of the Cities.

(c) "Contractor" shall mean the Central Arizona Water Conservation District.

(d) "Repayment Contract" shall mean the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 15, 1972 (Contract No. 14-06-W-245), and any amendment or revision thereof.

(e) "Secretary" and "Contracting Officer" shall mean the Secretary of the Interior or his duly authorized representative.

(f) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America; the Salt River Pima-Maricopa Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District.

(g) "Subcontract" shall mean the Subcontract among the United States, the Central Arizona Water Conservation District, and the Roosevelt Water Conservation District, Providing for Water Service, Central Arizona Project, dated [to be supplied] (Contract No. [to be supplied]).

(h) "Subcontractor" shall mean the Roosevelt Water Conservation District.

All other terms used in this Agreement which are defined in the Repayment Contract or the Subcontract shall have the meanings ascribed to them in the Repayment Contract and the Subcontract.

2. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, and for each Year thereafter until the term of the Subcontract expires, Subcontractor hereby assigns to the Cities an amount of Project Water, to be taken from Subcontractor's annual entitlement to Agricultural Water under Article 4.13 of the Subcontract, equal to the lesser of (a) 5,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, or (b) such amount of Project Water as is available from Subcontractor's annual entitlement to Agricultural Water after first providing for delivery to the Subcontractor, at the Subcontractor's Project turnout, of 8,000 acre-feet of Agricultural Water.

3. (a) If and when, as a result of a reduction in the acreage of eligible lands in Subcontractor's service area,

Subcontractor's entitlement to Agricultural Water under Article 4.13 of its Subcontract is insufficient to provide for the delivery to the Cities at the Cities' Project turnouts of a total amount of 3,000 acre-feet of Project Water (after first providing for the delivery of Subcontractor's entitlement to Agricultural Water as determined in accordance with subparagraph (b) of this Paragraph) in a Year in which the total supply of Agricultural Water available for delivery from the Project is 450,000 acre-feet or more, the Secretary shall thereafter make available for delivery to the Cities from the total supply of Agricultural Water otherwise available for delivery from the Project in each Year an amount of Project Water equal to the difference between (i) 3,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, and (ii) the amount of Project Water available to the Cities as a result of the assignment made in Paragraph 2 of this Agreement.

(b) If and when the provisions of subparagraph (a) of this Paragraph are implemented, Subcontractor's entitlement (i) to 8,000 acre-feet of Agricultural Water under subparagraph (b) of Paragraph 2 of this Agreement or (ii) to such lesser amount of Agricultural Water as may be determined in conformance with the provisions contained in subparagraph (d) of Paragraph 12 of this Agreement shall be subject to reduction in an amount equal to Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract multiplied by the amount of Agricultural Water made available by the Secretary for delivery to the Cities pursuant to subparagraph (a) of this Paragraph.

(c) Attached hereto as Appendix A are examples of how Paragraphs 2 and 3 of this Agreement are intended to operate under various conditions.

4. (a) Project Water made available to the Cities pursuant to Paragraph 2 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	972 acre-feet per Year;
City of Glendale	=	682 acre-feet per Year;
City of Scottsdale	=	23 acre-feet per Year;
City of Tempe	=	23 acre-feet per Year;
City of Mesa	=	627 acre-feet per Year;
City of Phoenix	=	1,136 acre-feet per Year;
Town of Gilbert	=	1,537 acre-feet per Year;
TOTAL	=	5,000 acre-feet per Year.

(b) Project Water made available to the Cities pursuant to Paragraph 3 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	583 acre-feet per Year;
City of Glendale	=	409 acre-feet per Year;
City of Scottsdale	=	14 acre-feet per Year;
City of Tempe	=	14 acre-feet per Year;
City of Mesa	=	376 acre-feet per Year;
City of Phoenix	=	682 acre-feet per Year;
Town of Gilbert	=	922 acre-feet per Year;
TOTAL	=	3,000 acre-feet per Year.

(c) Prior to the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted by mutual agreement of such Cities. On and after the enforceability date of the Settlement Agreement, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted only by mutual agreement of such Cities, the Contractor, and the United States.

(d) In the event this Agreement shall become effective and any City ("designating City") entitled to receive water hereunder is unable to take delivery of such water by virtue of not having constructed a treatment plant capable of taking deliveries of water from the Central Arizona Project, the designating City shall in writing designate one or more Cities which are also parties to this Agreement to act as the interim recipients ("interim recipient") of the designating City's water, and water made available to the designating City under this Agreement shall be delivered by Contractor to the interim recipient(s) until such time as the designating City's treatment plant is completed and ready to take delivery of and treat deliveries of water from the Central Arizona Project. The designating City shall notify Contractor and Subcontractor of any such designation and shall also provide Contractor and Subcontractor with copies of any agreement between the designating City and the interim recipient(s). Any

such agreement shall not be inconsistent with any provisions of the Repayment Contract, the Subcontract, or this Agreement.

5. Notwithstanding anything in the Repayment Contract or the Subcontract to the contrary, Project Water made available to the Cities pursuant to this Agreement may be used for any M&I Water uses including but not limited to ground water recharge.

6. Notwithstanding any schedule or other instruction to the contrary, Project Water made available to the Cities pursuant to this Agreement, including any water delivered under a designation agreement entered into pursuant to Paragraph 4(d) hereof, shall be accounted for and treated by the Contractor and the Contracting Officer as having been scheduled for delivery by the Cities, and delivered to the Cities, prior to the delivery of any portion of the Cities' entitlements to Project M&I Water under the Cities' M&I Water service subcontracts (City of Chandler, Contract No. 5-07-30-W0070; City of Glendale, Contract No. 5-07-30-W0062; City of Scottsdale, Contract No. 5-07-30-W0063; City of Tempe, Contract No. 5-07-30-W0061; City of Mesa, Contract No. 5-07-30-W0060; City of Phoenix, Contract No. 5-07-30-W0059; Town of Gilbert, Contract No. [to be supplied]), prior to the delivery of any portion of the Cities' entitlements to under the Cities' Project Water Lease Agreements (Exhibits "3.m.1" through "3.m.7" of the Settlement Agreement), and prior to the delivery of any portion of the Cities' entitlements to "Colorado River water" under and as defined in the Cities' River Water Exchange Contracts (Exhibits "3.h.1" through "3.h.7" of the Settlement Agreement).

7. Except as otherwise provided in Paragraph 11 hereof, the Cities shall make payment for Project Water made available to the Cities pursuant to this Agreement in accordance with the terms and conditions of contracts to be entered into among the United States, the Contractor, and each of the Cities, the forms of which are attached as Exhibits "3.h.1" through "3.h.7" to the Settlement Agreement.

8. Except as provided in Paragraph 10 of this Agreement, nothing in this Agreement shall relieve the Subcontractor of its obligation to make the payments required in the Subcontract.

9. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract, the costs associated with the delivery of Project Water to the Cities pursuant to this Agreement shall be nonreimbursable, and such costs shall be excluded from the Contractor's repayment obligation.

10. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the Subcontractor's obligation to pay Agricultural Water service capital charges pursuant to Subarticle 5.2(a) of the Subcontract shall be reduced in each Year by an amount equal to $2.00 per acre-foot, or such amount as may be determined by the Contracting Officer based on payment capacity determinations provided for in the Repayment Contract, multiplied by the total amount of Project Water assigned by the Subcontractor

to the Cities pursuant to Paragraph 2 of this Agreement and scheduled for delivery by the Cities in such Year.

11. (a) Each City agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any operation, maintenance, and replacement costs associated with Project Water made available for delivery to the City pursuant to Paragraph 2 of this Agreement. Each City further agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any Agricultural Water service capital charges associated with any Project Water assigned by the Subcontractor to the City pursuant to Paragraph 2 of this Agreement. The liability of each City under this Paragraph 11(a) shall be its sole and separate obligation, and shall not be an obligation joint and several with any other City or Cities.

(b) In the event any City shall default and fail to indemnify Contractor or Subcontractor as required in Paragraph 11(a) hereof, then such City's entitlement to water under this Agreement shall be forfeit and such entitlement shall be redistributed pro rata to each of the other Cities which are parties to this Agreement. The redistribution of water shall be effected by means of a notice from Subcontractor and Contractor, if either has not been indemnified, to the defaulting City and to the other Cities which are parties to this Agreement, and such redistribution shall be effective on the thirty-fifth day after the notice is given. Within ten days of receiving the notice of re-distribution, each City other than the defaulting City shall pay to

Subcontractor or Contractor, as the case may be, its share of the amount the defaulting City shall have failed to pay, which share shall be in the proportion which the amount of water redistributed to such City bears to the total amount of water redistributed. In the event any City to which water is redistributed shall fail to make the payment hereby required to be made within the time herein prescribed, Subcontractor or Contractor, as the case may be, shall be free to redistribute such City's entitlement to redistributed water to any other City which makes such payment and which is also a party to this Agreement.

12. (a) Subcontractor's entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be 5.98 percent of the total supply of Agricultural Water available for delivery from the Project (subject to reduction by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer) unless, prior to the issuance by the Secretary of Notice of Completion of the Water Supply System, Subcontractor notifies the Contractor and the Contracting Officer that it wishes to reduce its entitlement to a lesser percentage of the total Agricultural Water supply. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement under Subarticle 4.13(a) of the Subcontract shall be as stated in the notice from the Subcontractor to the Contractor and the Contracting Officer.

(b) Notwithstanding the foregoing, the Contractor and the Contracting Officer may at any time prior to the issuance of

such Notice of Completion require the Subcontractor to specify its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract by notifying the Subcontractor that it must specify such entitlement within six months of the date that the Contractor and the Contracting Officer issue such notice. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be as specified by the Subcontractor in response to the notice issued by the Contractor and the Contracting Officer. In the event the Subcontractor fails to make such specification within the time required, Subcontractor's entitlement shall be fixed at 5.98 percent of the total Agricultural Water supply (subject to adjustment by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer).

(c) At the time the Subcontractor notifies the Contractor and the Contracting Officer of its percentage entitlement pursuant to subparagraph (a) of this Paragraph, or at the time the Subcontractor specifies its entitlement pursuant to subparagraph (b) of this Paragraph, Subcontractor may relinquish:

(i) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(a) of the Subcontract to be made available to the Subcontractor as a result of deductions made in other subcontractors' entitlements to Agricultural Water to reflect removal of eligible lands from agricultural use; and

(ii) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(b) of the Subcontract to be made available to the Subcontractor as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available;

Provided, however, that the Subcontractor shall relinquish at least 5,000 acre-feet, or the percentage of the projected Agricultural Water supply that most closely approximates 5,000 acre-feet, of any additional Agricultural Water entitlement to which the Subcontractor would be entitled under Subarticle 4.13(b) of the Subcontract as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available.

(d) Subject to the requirements and limitations of this Paragraph 12, Subcontractor may select its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract based upon its own evaluation of potential Agricultural Water supplies and its own requirements; Provided, however, that said Subcontractor's entitlement to Agricultural Water shall in no event exceed the lesser of 5.98 percent or the percentage entitlement determined by dividing the number of acres of eligible lands in the Subcontractor's service area by the total number of acres of eligible lands in the service areas of all subcontractors of Agricultural Water, as determined by the Contracting Officer.

13. Except as provided in this Agreement, all terms and conditions of the Subcontract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

Attest:

_____
Secretary

CENTRAL ARIZONA WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: George W. Barr
Title: President

Attest:

_____
Secretary

ROOSEVELT WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: Mark W. Dobson
Title: President

Attest:

_____
Clerk

Approved as to Form:

_____
City Attorney

CITY OF PHOENIX, a Municipal corporation, MARVIN A. ANDREWS, City Manager

By _____

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF SCOTTSDALE, an Arizona municipal corporation

By
Name: Herbert R. Drinkwater
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF GLENDALE, an Arizona municipal corporation

By
Name: George R. Renner
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF MESA, an Arizona municipal corporation

By
Name: C.K. Lester
Title: City Manager

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF TEMPE, an Arizona municipal corporation

By
Name: Harry E. Mitchell
Title: Mayor

. . .

Attest:

Clerk, Acting

Approved as to Form:

City Attorney

CITY OF CHANDLER, an Arizona municipal corporation

By
Name: Richard Dugan
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

TOWN OF GILBERT, an Arizona municipal corporation

By
Name: Steve M. Berman
Title: Mayor

. . .

APPENDIX A

The following are five examples of how Paragraphs 2 and 3 of the Assignment are intended to operate under varying water supply conditions and assuming varying entitlements to CAP Agricultural Water for Roosevelt Water Conservation District ("RWCD") under Subarticle 4.13(a) of RWCD's CAP Agricultural Subcontract.

EXAMPLE 1

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 1,000,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 5.98%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 59,800 AF.

(5.98% X 1,000,000 AF - 59,800 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 59,800 AF - 8,000 AF = 51,800 AF

5. RWCD's balance = 54,800 AF.

EXAMPLE 2

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 13,005 AF.

(2.89% X 450,000 AF = 13,005 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 13,005 AF - 8,000 AF = 5,005 AF.

5. RWCD's balance = 8,005 AF.

EXAMPLE 3

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,890 AF.

(2.89% X 100,000 AF = 2,890 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment = 0 (because RWCD's entitlement is sufficient to provide for delivery to the Cities of at least 3,000 AF in any year in which the total supply is 450,000 AF or more -- See Example 2).

EXAMPLE 4

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 10,980 AF.

(2.44% X 450,000 AF - 10,980 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 10,980 AF - 8,000 AF = 2,980 AF.

5. Cities' entitlement under Paragraph 3 of the Assignment =

(a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area:

Cities' entitlement = 3,000 AF - 2,980 AF = 20 AF

CITIES' TOTAL = 3,000 AF

(b) IF 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0

CITIES' TOTAL = 2,980 AF

EXAMPLE 5

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,440 AF.

(2.44% X 100,000 AF = 2,440 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment:

(a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement = 3,000 AF.

(b) RWCD's contribution = 2.44% X 3,000 AF = 73 AF.

(c) RWCD's net entitlement = 2,440 AF - 73 AF = 2,367 AF.

BUT

(d) If 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0.

Exhibit "C"

Total CAP Water Available to M&I:	443,067	A
SRPMIC Agreement Water Calculations		
• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	2,088	
Total Agreement Water Credit:	19,912	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	462,979	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	69.64%	

CAP Water Available to M&I: 443,067 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	**Delivery Without Agreement (AF)**	**Delivery With Agreement* (AF)**
Avondale	4,099	0.64%	0.00%	0	**2,833**	**2,855**
Peoria	17,849	2.79%	0.00%	0	**12,338**	**12,430**
Glendale	14,083	2.20%	13.64%	3,545	**9,735**	**12,276**
Phoenix	113,882	17.83%	22.73%	5,909	**78,721**	**83,422**
Scottsdale	19,702	3.08%	0.45%	118	**13,619**	**13,803**
Chaparral City	6,978	1.09%	0.00%	0	**4,824**	**4,859**
Prescott	7,127	1.12%	0.00%	0	**4,927**	**4,963**
Payson	4,995	0.78%	0.00%	0	**3,453**	**3,478**
Tempe	4,315	0.68%	0.45%	118	**2,983**	**3,087**
Mesa	29,527	4.62%	12.55%	3,262	**20,411**	**22,834**
Apache Jct	6,000	0.94%	0.00%	0	**4,147**	**4,178**
Chandler	3,668	0.57%	19.45%	5,056	**2,536**	**6,075**
Gilbert	7,235	1.13%	30.74%	7,991	**5,001**	**10,604**
Casa Grande	8,884	1.39%	0.00%	0	**6,141**	**6,187**
Tucson	148,420	23.23%	0.00%	0	**102,595**	**103,359**
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

Total CAP Water Available to M&I:	218,338	A
SRPMIC Agreement Water Calculations		
• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	3,496	
Total Agreement Water Credit:	18,504	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	236,842	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	35.62%	

CAP Water Available to M&I: 218,338 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	**Delivery Without Agreement (AF)**	**Delivery With Agreement* (AF)**
Avondale	4,099	0.64%	0.00%	0	**1,385**	**1,460**
Peoria	17,849	2.79%	0.00%	0	**6,031**	**6,359**
Glendale	14,083	2.20%	13.64%	3,545	**4,759**	**6,280**
Phoenix	113,882	17.83%	22.73%	5,909	**38,481**	**42,675**
Scottsdale	19,702	3.08%	0.45%	118	**6,657**	**7,061**
Chaparral City	6,978	1.09%	0.00%	0	**2,358**	**2,486**
Prescott	7,127	1.12%	0.00%	0	**2,408**	**2,539**
Payson	4,995	0.78%	0.00%	0	**1,688**	**1,779**
Tempe	4,315	0.68%	0.45%	118	**1,458**	**1,579**
Mesa	29,527	4.62%	12.55%	3,262	**9,977**	**11,681**
Apache Jct	6,000	0.94%	0.00%	0	**2,027**	**2,137**
Chandler	3,668	0.57%	19.45%	5,056	**1,239**	**3,108**
Gilbert	7,235	1.13%	30.74%	7,991	**2,445**	**5,424**
Casa Grande	8,884	1.39%	0.00%	0	**3,002**	**3,165**
Tucson	148,420	23.23%	0.00%	0	**50,151**	**52,874**
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

EXHIBIT "3.h.5"

River Water Exchange Contract
City of Mesa, Arizona

Exhibit "3.h.5"
RIVER WATER EXCHANGE CONTRACT
City of Mesa, Arizona

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Exhibit "3.h.5"
RIVER WATER EXCHANGE CONTRACT
City of Mesa, Arizona

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Exhibits

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Exhibit "B" Assignment among RWCD, CAWCD and the United States

Exhibit "C" SRPMIC Agreement Water Calculations (Tables 1 and 2)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE CITY OF MESA, ARIZONA,
PROVIDING FOR WATER SERVICE

ARTICLE 1
Preamble

1. THIS CONTRACT, made as of the 12th day of February, 1988, in pursuance of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549, and 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), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, hereinafter referred to collectively as the "Federal Reclamation Laws," and the various authorities and responsibilities of the Secretary of the Interior in relation to Indians and Indian Tribes, as contained in Title 25 U.S.C. and 43 U.S.C. § 1457, among THE UNITED STATES OF AMERICA, acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as "CAWCD," a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the CITY OF MESA, Arizona, hereinafter referred to as the "City," with its principal place of business at 55 North Center Street, Mesa, Arizona;

WITNESSETH, THAT:

ARTICLE 2
Explanatory Recitals

2. 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., CAWCD 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 CAWCD, shall be a party to contracts that are in conformity with and subsidiary to the master contract; and

WHEREAS, the United States and CAWCD entered into Contract No. 14-06-W-245 dated December 15, 1972, which was amended on

December 1, 1988, hereinafter referred to as the "Repayment Contract," a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, whereby CAWCD agrees to repay to the United States the reimbursable costs of the Central Arizona Project allocated to CAWCD; and

WHEREAS, the City has entered into a water service subcontract with the United States and CAWCD for municipal and industrial water service from water supplies available from the Central Arizona Project, Contract No. 5-07-30-W0060; and

WHEREAS, the United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert, Arizona, and CAWCD have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members, to finally resolve pending litigation on water rights and damage claims, and to seek funding for implementation of the settlement; and

WHEREAS, the United States, acting through the Secretary of the Interior, has both a trust and fiduciary responsibility to make the Salt River Pima-Maricopa Indian reservation a permanent Tribal homeland for the Salt River Pima-Maricopa Indian Community; and

. . .

WHEREAS, as part of the water rights settlement with the Salt River Pima-Maricopa Indian Community, the United States is required to contract with the City for the delivery through Central Arizona Project facilities of not to exceed two thousand seven hundred sixty (2,760) acre-feet per year of Colorado River water which was not included in the determination of water supplies available to the Central Arizona Project, plus certain additional amounts of Central Arizona Project water to be made available each year by the Roosevelt Water Conservation District or the Secretary of the Interior from Central Arizona Project water supplies otherwise available for agricultural use;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 3
Definitions

3. For purposes of this Contract:

(a) "Agricultural water" shall mean water made available from the Central Arizona Project for the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than five acres.

(b) "CAWCD's service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such other counties as may hereafter become part of the District, . . .

exclusive of any Indian reservation land lying wholly or partly within said Counties.

(c) "Central Arizona Project" or "CAP" or "project" shall mean the project and works authorized by Section 301(a) of the Colorado River Basin Project Act and constructed by the United States pursuant to the provisions of said Act.

(d) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix, and the Town of Gilbert.

(e) "Colorado River water" shall mean that Colorado River mainstream water to be delivered to the City under this Contract which has a Colorado River priority pre-dating September 30, 1968.

(f) "Contracting Officer" shall mean the Secretary or his authorized designee acting on his behalf.

(g) "Distribution works" shall mean those facilities constructed or used for the purpose of distributing water to or within the City's service area after said water has been transported through the water supply system to the City's project turnout(s).

(h) "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be amended or revised.

. . .

(i) "Miscellaneous water" shall mean water made available from the Central Arizona Project, or by exchange for such water, for recreational and fish and wildlife purposes at other than project facilities, and which has a lesser priority of use than agricultural water.

(j) "Municipal and industrial water," hereinafter sometimes referred to as "M&I water," shall mean water made available from the Central Arizona Project other than agricultural water and miscellaneous water.

(k) "Notice of completion" shall mean the notice which the Contracting Officer issues to CAWCD to announce the substantial completion of the water supply system, or of those features of the project which include or comprise the water supply system, or of the entire project if constructed concurrently, thereby initiating payments therefor allocated to CAWCD.

(l) "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

(m) "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

(n) "Assignment Water" shall mean that water to be delivered to the City under this Contract which is made available to the City by the Roosevelt Water Conservation District ("RWCD") or the Secretary of the Interior pursuant to the Assignment, dated as of February 12, 1988, among the United States, CAWCD, RWCD, . . .

and the Cities. A copy of the Assignment is attached hereto as Exhibit "B" and by this reference made a part hereof.

(o) "Project works" shall mean the principal works described in Section 301(a) of the Colorado River Basin Project Act, and appurtenances thereto, or as modified pursuant to the Repayment Contract, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

(p) "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from Colorado River water or Assignment Water as defined herein, but shall not include any water delivered through the project works for ground water recharge purposes.

(q) "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

(r) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, RWCD, the Roosevelt Irrigation District, the Cities, and CAWCD.

(s) "Subcontractor" shall mean any irrigation district, municipality, individual, or any other entity which enters into a water service subcontract with the United States and CAWCD in furtherance of the provisions of the Colorado River Basin Project Act.

(t) "Time of shortage" shall mean a calendar year for which the Secretary determines that a shortage exists pursuant to Section 301(b) of the Colorado River Basin Project Act, such that there is not sufficient water available for delivery from the Central Arizona Project in that year (after reduction in consideration of anticipated losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein) to meet fully the entitlements of Indian contractors and non-Indian municipal and industrial subcontractors of Central Arizona Project water supplies.

(u) "Transferred works" shall mean such features of the project or such facilities of the water supply system as to which OM&R responsibility is transferred from the United States to the Operating Agency.

(v) "Water supply system" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila, and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

(w) "Year" shall mean the period between January 1 through the next succeeding December 31.

ARTICLE 4
Term

4. This Contract shall become effective upon its execution by the parties hereto and its term shall be perpetual.

ARTICLE 5
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 2,760 acre-feet; and

(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 627 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 376 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery

point on the Colorado River, and shall be subject to reduction on account of losses by reason of evaporation and see page occurring during the transportation of such water through the water supply system to the City's project delivery point. Said losses occurring on the City's Colorado River water supplies shall be determined by the Contracting Officer or the Operating Agency, but shall not exceed the City's pro rata share of losses as compared to losses due to evaporation and seepage occurring during transportation through the water supply system of all water supplies delivered during a year.

(d) The City's entitlement to Assignment Water under Subparagraphs 5(b)(ii) and 5(b)(iii) hereof, and its rights and obligations with respect to such Assignment Water, shall be subject to the terms and conditions of the Assignment attached hereto as Exhibit "B".

(e) The City's entitlement to Colorado River water and Assignment Water under this Contract shall be in addition to the City's entitlement to Central Arizona Project water for municipal and industrial use under the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0060).

(f) During such periods as it operates and maintains the Central Arizona Project, the United States shall deliver Colorado River water and Assignment Water to which the City is entitled under this Contract through the water supply system. Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the United States shall use all reasonable diligence to make available

to the City the quantity of Colorado River water and Assignment Water specified in the schedule submitted by the City in accordance with Article 6 hereof. After transfer of OM&R responsibility to the Operating Agency, the United States shall make deliveries of Colorado River water and Assignment Water to the Operating Agency which shall make subsequent delivery of such water to the City as provided herein.

(g) The obligation of the United States and the Operating Agency to deliver Colorado River water and Assignment Water to the City under this Contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, the contract between the United States and the State of Arizona dated February 9, 1944, the Opinion of the Supreme Court of the United States in the case of Arizona v. California, et al., rendered June 3, 1963, 373 U.S. 546, and the Decree of that court in said case, entered March 9, 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as hereafter modified;

(ii) Executive A, Seventy-Eighth Congress, Second Session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and

Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty, all hereinafter referred to as the Mexican Water Treaty;

(iii) The express understanding and agreement by the City that this Contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this Contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and City shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam, Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to City hereunder; and

(iv) The right of the United States or the Operating Agency temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works what-

soever affecting, utilized or, in the opinion of the Secretary or the Operating Agency, necessary for delivery of water hereunder, it being understood that so far as feasible the United States or the Operating Agency will (i) do so during periods of low water demands and (ii) give reasonable notice in advance of such temporary discontinuance or reduction.

(h) Subject to the terms and conditions herein, the United States and the Operating Agency shall be obligated to deliver Colorado River water and Assignment Water to the City without regard as to whether or not the Salt River Pima-Maricopa Indian Community exercises its right to use any or all of the exchange water referred to in Paragraph 12 of the Settlement Agreement.

(i) Delivery and use of Colorado River water and Assignment Water under this Contract is further conditioned on the following, and the City hereby agrees that:

(i) All uses of Colorado River water, Assignment Water and return flow shall be consistent with Arizona water law unless such law is inconsistent with the Congressional directives applicable to the Central Arizona Project.

(ii) The system or systems through which Colorado River water and Assignment Water for municipal and industrial (including groundwater recharge) purposes is conveyed after delivery to the City shall consist of pipelines, canals, distribution systems, or other conduits provided and maintained with linings adequate in the Contracting Officer's judgment to prevent excessive conveyance losses.

(iii) The City shall not pump, or within its legal authority, permit others to pump ground water from within the exterior boundaries of the City's service area, which has been delineated on a map filed with the Contractor and approved by the Contractor and the Contracting Officer, for use outside of said service area unless such pumping is permitted under Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time, and the Contracting Officer, CAWCD, and the City shall agree, or shall have previously agreed, that a surplus of ground water exists and drainage is or was required; Provided, however, That such pumping may be approved by the Contracting Officer and CAWCD, and approval shall not be unreasonably withheld, if such pumping is in accord with the Colorado River Basin Project Act and upon submittal by the City of a written certification from the Arizona Department of Water Resources or its successor agency that the pumping and transportation of ground water is in accord with Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time.

(iv) The City shall not sell or otherwise dispose of or permit the sale or other disposition of Colorado River water and Assignment Water for use outside of Maricopa, Pinal, and Pima Counties; Provided, however, That this does not prohibit exchanges of Colorado River water and Assignment Water covered by separate agreements; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article . . .

6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0060).

(j) (i) Colorado River water and Assignment Water scheduled for delivery in any year under this contract may be used by the City or resold or exchanged by the City pursuant to appropriate agreements approved by the Contracting Officer and CAWCD. If said water is resold or exchanged by the Contractor for an amount in excess of that which the City is obligated to pay under this Contract, the excess amount shall be paid forthwith by the City to CAWCD for application against the CAWCD's repayment obligation to the United States; Provided, however, That the Contractor shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to OM&R costs.

(ii) Colorado River water and Assignment Water scheduled for delivery in any year under this Contract that cannot be used, resold, or exchanged by the City may be made available by the Contracting Officer or the Operating Agency to other users. If such water is sold to or exchanged with other users, the City shall be relieved of its payments hereunder only to the extent of the amount paid to the Contracting Officer and the Operating Agency by such other users, but not to exceed the amount the City is obligated to pay under this Contract for said water.

(iii) In the event the City, the Contracting Officer, or the Operating Agency is unable to sell any portion of the Colorado River water or Assignment Water scheduled for delivery by the City but not required by the City in any year, the City

shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water as determined by the Contracting Officer or the Operating Agency.

(k) The City shall have the right to use Colorado River water and Assignment Water received under this Contract for any purpose consistent with Arizona law, including ground water recharge.

ARTICLE 6
Procedure for Ordering Water

6. At least six months prior to the delivery of Colorado River water and Assignment Water to the City under this Contract, the Contracting Officer or the Operating Agency shall issue a written notice of availability of such water to the City. The City will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer and the Operating Agency showing the quantities of (i) Colorado River water and (ii) Assignment Water requested for delivery. The City shall submit a schedule which requests the delivery of all Assignment Water available to it. If the first notice of availability of water is issued to the City by the Contracting Officer or the Operating Agency prior to June 1 of any year, the first schedule for the balance of said year shall be submitted to the Contracting Officer and the Operating Agency within 30 days after the City's receipt of such notice. If such notice is issued after June 1 of any year, the first schedule shall be submitted to the Contracting Officer and the Operating Agency within 30 days after the City's

receipt of such notice and shall cover the balance of such year and the next succeeding year. Thereafter, the amounts, times, and rates of delivery of water to the City during any year shall be in accordance with a water delivery schedule for that year, such schedule to be determined in the following manner:

(a) On or before June 1 of each year, the Contracting Officer shall announce (i) the amount of Colorado River water and (ii) the amount of Assignment Water available for delivery during the following year in a written notice to the Operating Agency and the City.

(b) On or before October 1 of each year, the City shall submit in writing to the Operating Agency and the Contracting Officer a water delivery schedule indicating the amounts of (i) Colorado River water and (ii) Assignment Water desired by the City during each month of the following year along with a preliminary schedule of water desired for the succeeding 2 years. The City shall schedule for delivery each year all Assignment Water available to it for delivery during that year.

(c) Upon receipt of such schedule, the Contracting Officer and the Operating Agency shall review it and, after consultation with the City, shall make only such modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to the City are consistent with the delivery capability of the project, considering, among other things, the availability of water and the delivery schedules of all subcontractors of Central Arizona Project water service; Provided, That

this provision shall not be construed to reduce annual deliveries to the City.

(d) On or before November 15 of each year, the Contracting Officer or the Operating Agency shall determine and furnish to the City the water delivery schedule for the next succeeding year which shall show the amounts of (i) Colorado River water and (ii) Assignment Water to be delivered to the City during each month of that year.

(e) The monthly water delivery schedules may be amended by the Contracting Officer or the Operating Agency upon the City's written request. Proposed amendments shall be submitted by the City within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer or the Operating Agency in like manner as the schedule itself.

(f) In no event shall the Contracting Officer or the Operating Agency be required to deliver in any one month (i) an amount of Colorado River water greater than eleven percent (11%) of the City's maximum annual entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment Water greater than eleven percent (11%) of the City's maximum annual entitlement to Assignment Water under Subarticle 5(b)(ii) or 5(b)(iii) of this Contract; Provided, however, That the Contracting Officer or the Operating Agency may deliver a greater percentage of such water in any month if such increased delivery is compatible with the overall delivery of Central Arizona Project water to CAP

subcontractors as determined by the Contracting Officer and the Operating Agency, and if the City agrees to accept such increased deliveries.

ARTICLE 7
Points of Delivery--Measurement and Responsibility for Distribution of Water

7. (a) All water to be furnished to the City pursuant to this Contract shall be delivered at turnouts to be constructed by the United States at such point(s) on the water supply system as may be agreed upon in writing by the Contracting Officer and CAWCD, after consultation with the City.

(b) Unless the United States and the City agree by contract to the contrary, the City shall construct and install, at its sole cost and expense, connection facilities required to take and convey such water from the turnouts to the City's service area. The City shall furnish, for approval of the Contracting Officer, drawings showing the construction to be performed by the Contractor within the water supply system right-of-way six months before starting said construction. The facilities may be installed, operated, and maintained on the water supply system right-of-way subject to such reasonable restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by the Contracting Officer.

(c) All water delivered to the City pursuant to this Contract shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or by the Operating Agency. Upon the request of the

City or the Operating Agency, the accuracy of such measurements shall be investigated by the Contracting Officer or by the Operating Agency and the City, and any errors which may be mutually determined to have occurred therein shall be adjusted; Provided, That in the event the parties cannot agree on the required adjustment, the Contracting Officer's determination shall be conclusive.

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

(e) In addition to the right of the United States under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce the amount of water to be delivered through the Central Arizona Project, the United States or the Operating Agency may, after consultation with the City, temporarily discontinue or reduce the quantity of water to be furnished to the City as herein provided for the purpose of investigation, inspection, maintenance, repair, or replacement of any CAP facilities or any part thereof necessary for the furnishing of water to the City under this Contract, but so far as feasible the United States or

the Operating Agency shall coordinate any such discontinuance or reduction with the City and shall give the City due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Neither the United States, its officers agents, and employees, nor the Operating Agency, its officers, agents, and employees, shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to the City of less water than what has been paid for in advance, the City shall be entitled to be reimbursed for the appropriate proportion of advance payments of OM&R charges prior to the date of the City's next payment of OM&R charges or the City may be given credit toward the next payment of OM&R charges if the City should so desire.

ARTICLE 8
Priority in Case of Shortage

8. (a) Subject to the provisions of Section 304(e) of the Colorado River Basin Project Act, in the event of a shortage of the water supplies available to the Central Arizona Project, as determined by the Contracting Officer after consultation with CAWCD, Assignment Water furnished to the City under this Contract shall be subject to reduction in the same manner and to the same extent as agricultural water under Central Arizona Project agricultural water service subcontracts.

. . .

(b) In a time of shortage, the City's entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract shall be determined by the following formula:

City's entitlement to Colorado River water in a time of shortage = $[(X+Y) \cdot (A+B)/(C+D)] - [(X/D) \cdot A]$*

Where:

X = the City's entitlement to Central Arizona Project water for M&I water use under Article 4.12 of Contract No. 5-07-30-W0060, as the same may be amended or supplemented from time to time;

Y = 3,262 acre-feet;

A = the total amount of water available from the Central Arizona Project for non-Indian M&I water use (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein), as determined by the Contracting Officer in accordance with the method outlined in the Record of Decision of the Secretary published in the Federal Register on March 24, 1983;

B = the total amount of Colorado River water available to the Cities pursuant to this Contract with the City of Mesa and like contracts with the other Cities (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system);

C = 26,000 acre-feet.

D = the sum of all non-Indian municipal and industrial subcontractors' entitlements to Central Arizona Project water for M&I water use under Article 4.12 of all non-Indian CAP municipal and industrial subcontracts, as the same may be amended or supplemented from time to time;

* It is the intent of the parties that this calculation be per-

formed in a manner which is consistent with the method of calculation exemplified in Tables 1 and 2 attached hereto as Exhibit "C".

(c) Notwithstanding the provisions of Subarticle 5(c) of this Contract, the City's entitlement to Colorado River water, as determined in accordance with the formula set forth in Subarticle 8(b) hereof, shall be made available to the City at the City's project turnout(s).

(d) In a time of shortage, any Colorado River water available from the 22,000 acre-feet to be obtained by the United States pursuant to Subarticle 5(a) hereof in excess of that necessary to satisfy the entitlement of the City under Subarticle 8(b) of this Contract and the entitlements of the other Cities under Subarticle 8(b) of like contracts with such Cities shall be made available by the Secretary for delivery to non-Indian CAP municipal and industrial subcontractors other than the Cities pursuant to the Central Arizona Project M&I water service subcontracts with such subcontractors, pro rata in proportion to each such subcontractor's entitlement to Central Arizona Project water for M&I use under such subcontractor's Central Arizona Project M&I water service subcontract. The manner in which this Subarticle 8(d) is intended to operate is illustrated by Tables 1 and 2 attached hereto as Exhibit "C".

ARTICLE 9
Payments

9. (a) Subject to the provisions of Article 11 hereof, the City shall pay in advance for CAP OM&R costs estimated to be

incurred by the United States or the Operating Agency in delivering Colorado River water and Assignment Water to the City pursuant to this Contract. At least 6 months prior to the first delivery of such water, or as soon thereafter as is practicable, the Contracting Officer or the Operating Agency shall furnish the City with an estimate of the City's share of OM&R costs to the end of the initial year of water delivery and an estimate of such costs for the following year. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer or the Operating Agency, but prior to the delivery of water, the City shall advance to the Contracting Officer or the Operating Agency its share of such estimated costs to the end of the initial month of water delivery and without further notice or demand shall on or before the first day of each succeeding month of the initial year of water delivery and the following year advance to the Contracting Officer or the Operating Agency in equal monthly installments the City's share of such estimated costs. Advances of monthly payments for each subsequent year shall be made by the City to the Contracting Officer or the Operating Agency on the basis of annual estimates to be furnished by the Contracting Officer or the Operating Agency on or before June 1 preceding each said subsequent year, and the advances of payments for said estimated costs shall be due and payable in equal monthly payments on or before the first day of each month of the subsequent year. Differences between actual OM&R costs and estimated OM&R costs shall be adjusted in the next succeeding annual estimates; Provided, however, That if in the opinion

of the Contracting Officer or the Operating Agency the amount of any annual OM&R estimate is likely to be insufficient to cover the above-mentioned costs during such period, the Contracting Officer or the Operating Agency may increase the annual estimate of the City's OM&R costs by written notice thereof to the City, and the City shall forthwith increase its remaining monthly payments in such year to the Contracting Officer or the Operating Agency by the amount necessary to cover the estimated insufficiency. All estimates of OM&R costs shall be accompanied by data and computations relied on by the Contracting Officer or the Operating Agency in determining the amounts of the estimated OM&R costs and shall be subject to joint review by the City and the Contracting Officer or the Operating Agency.

(b) Other than as provided for in Exhibit "B" hereto with respect to Assignment Water, the City shall not be required to pay any water service capital charge(s) with respect to Colorado River water or Assignment Water to which the City is entitled under this Contract.

(c) Payment of all OM&R charges becoming due hereunder prior to or on the dates stipulated in Subarticle 9(a) hereof is a condition precedent to receiving water under this Contract.

(d) All payments to be made to the Operating Agency or the United States under Subarticle 9(a) hereof shall be made by the City as such payments fall due from revenues legally available to the City for such payment from the sale of water to its water users and from any and all other sources which might be legally

available; Provided, That no portion of the general taxing authority of the City, nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of this Contract, nor shall such sources be liable for any payments, contributions, or other costs pursuant to this Contract, or to satisfy any obligation hereunder unless duly and lawfully allocated and budgeted for such purpose by the City for the applicable budget year; and Provided, further, That no portion of this Contract shall ever be construed to create an obligation superior in lien to or on a parity with the Cities' revenue bonds now or hereafter issued. The City shall levy and impose such necessary water service charges and rates and use all the authority and resources available to it to collect all such necessary water service charges and rates in order that the City may meet its obligations hereunder and make in full all payments required under this Contract on or before the date such payments become due.

ARTICLE 10
Loss of Entitlement

10. The City shall have no right to delivery of Colorado River water or Assignment Water under this Contract during any period in which the City may be in arrears in the payment of any charges due the United States or the Operating Agency. The Contracting Officer or the Operating Agency may sell to another entity any water determined to be available under the City's entitlement for which payment is in arrears; Provided, however, That except as provided to the contrary in Exhibit "B" hereto, the City may regain

the right to use any unsold portion of the water determined to be available under the City's original entitlement upon (i) payment of all delinquent charges plus any difference between the contractual obligation and the price received in the sale of the water by the Contracting Officer or Operating Agency and (ii) payment of charges for the current period.

ARTICLE 11
Refusal to Accept Delivery

11. In the event the City fails or refuses in any year to accept delivery of the quantity of water available for delivery to and required to be scheduled by it pursuant to this Contract, or in the event the City in any year fails to submit a schedule for delivery as provided in Article 6 hereof, said failure or refusal shall not relieve the City of its obligation to make the payments required in this Contract.

ARTICLE 12
Charges for Delinquent Payments

12. (a) The City shall be subject to interest, administrative, and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the City shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the City shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the City shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the City shall

pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

ARTICLE 13
Secretarial Control of Return Flow

13. (a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of CAWCD's service area as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for CAP use return flow which originates or results from water contracted for from the Central Arizona Project within the boundaries of CAWCD's service area if, in his judgment, such return flow is not being put to a beneficial use. The City may recapture and reuse or sell its return flow; Provided, however, That such return flow may not be sold for use outside Maricopa, Pinal, and Pima Counties; and

Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0060). The City shall, at least 60 days in advance of any proposed sale of such water, furnish the following information in writing to the Contracting Officer and CAWCD:

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

(ii) The location and proposed use of the return flow.

(iii) The price to be charged for the return flow.

(b) The price charged for the return flow may cover the cost incurred by the City for Colorado River water and Assignment Water plus the cost required to make the return flow usable. If the price received for the return flow is greater than the costs incurred by the City, as described above, the excess amount shall be forthwith paid by the City to the CAWCD for application against CAWCD's repayment obligation to the United States. Costs required to make return flow usable shall include but not be limited to capital costs and OM&R costs including transportation, treatment, and distribution, and the portion thereof which may be retained by the City shall be subject to the advance approval of CAWCD and the Contracting Officer.

(c) Any return flow captured by the United States and determined by the Contracting Officer and CAWCD to be suitable

and available for use by the City may be delivered by the United States or Operating Agency to the City as a part of the water supply for which the City has subcontracted pursuant to Contract No. 5-07-30-W0060, and such water shall be accounted and paid for pursuant to the provisions thereof.

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

ARTICLE 14
Water and Air Pollution Control

14. The City, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

ARTICLE 15
Quality of Water

15. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. Neither the United States nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. The City waives its right to make a claim against the United States, the Operating Agency, or any subcon-

tractor because of changes in water quality caused by the commingling of water to be delivered under this Contract with other water.

ARTICLE 16
Equal Opportunity

16. During the performance of this Contract, the City agrees as follows:

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

(b) The City will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The City will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising said labor union or workers' representative of the City's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The City will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The City will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the City's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the City may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as pro-

vided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The City will include the provisions of Subarticles 16(a) through 16(g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The City will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the City becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 17
Compliance with Civil Rights Laws and Regulations

17. (a) The City shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national ori-

gin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the City agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

ARTICLE 18
Notices

18. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the City and CAWCD, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States and CAWCD, when mailed, postage prepaid, or delivered to the Manager of the City, 55 North Center

Street, Mesa, Arizona 85201, on behalf of the City and the United States, when mailed, postage prepaid, or delivered to the General Manager, Central Arizona Water Conservation District, 23636 North Seventh Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

ARTICLE 19
Assignment Limited--Successors and Assigns Obligated

19. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid unless and until approved in writing by the Contracting Officer and CAWCD.

ARTICLE 20
Officials Not to Benefit

20. No Member of or Delegate to Congress, Resident Commissioner, or official of the City shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

ARTICLE 21
Transfer of OM&R Responsibility to CAWCD; Project Repayment

21. (a) At or prior to the date that the United States transfers OM&R responsibility for project works associated with delivery of water to the Cities to CAWCD as the Operating Agency, the United States shall secure the agreement of CAWCD to perform the United States' obligations under this Contract to deliver water under this Contract through the transferred works.

(b) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract and any amendment or revision thereof, the costs associated with the delivery of water to the City under this Contract shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

ARTICLE 22
Repayment Contract Controlling

22. Pursuant to the Repayment Contract, the United States has agreed to construct and, in the absence of an approved Operating Agency, to operate and maintain the works of the Central Arizona Project and to deliver Central Arizona Project water to the various subcontractors within CAWCD's service area; and CAWCD has obligated itself for the payment of various costs, expenses, and other amounts allocated to CAWCD pursuant to Article 9 of the Repayment Contract. The City expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this Contract No. 9-07-30-W0239 the day and year first above-written.

THE UNITED STATES OF AMERICA

By

. . .

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Attest: _____ By _____
Secretary President

CITY OF MESA, ARIZONA

Attest: _____ By _____
Clerk ~~Mayor~~ City Manager

Approved as to Form: _____
City Attorney

CITY OF MESA MARICOPA COUNTY CORPORATE SEAL

Exhibit "A"

CAP Master Repayment Contract

DUPLICATE-ORIGINAL

Contract No. 14-06-W-245
Amendment No. 1
B.C. Draft 11/28/88

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

1. PARTIES

The parties to this contract, executed as of this first day of December, 1988, are the United States of America, acting through the Department of the Interior, and the Central Arizona Water Conservation District, a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona.

2. AUTHORITIES

This contract is made pursuant to the:

2.1 Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto.

2.2 Boulder Canyon Project Act, approved December 21, 1928, 45 Stat. 1057, a supplement to the Federal Reclamation Laws.

2.3 Reclamation Project Act of 1939, approved August 4, 1939, 53 Stat. 1187, as amended.

2.4 Colorado River Basin Project Act, approved September 30, 1968, 82 Stat. 885, as amended, a supplement to the Federal Reclamation Laws.

2.5 Arizona Revised Statutes, Section 48-3701 et seq.

3. RECITALS

3.1 The Colorado River Basin Project Act provides, among other things, that for the purposes of furnishing irrigation water and municipal and industrial water supplies to water-deficient areas in 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, consisting of the principal works hereinafter described in Article 6.3.

3.2 Pursuant to the provisions of Arizona Revised Statutes, Section 48-3701 et seq., the Central Arizona Water Conservation District 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, Section 48-3701 et seq.

3.3 On December 15, 1972, the United States and the Contractor entered into a contract entitled "Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), whereby, among other things, the United States agreed to construct the Central Arizona Project and the Contractor agreed to repay the costs of the project properly allocable to the Contractor.

3.4 Subarticle 9.3(b) of said contract provides that the Contractor's repayment obligation shall not exceed $1.2 billion.

3.5 Subarticle 9.3(b) of said contract also provides that if the

Contractor's repayment obligation will exceed $1.2 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation.

3.6 Both parties acknowledge that the Contractor's repayment obligation will exceed $1.2 billion, and have agreed to increase the Contractor's repayment ceiling to a level sufficient to facilitate completion of the project.

4. ARTICLES OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is agreed by and between the parties hereto as follows:

5. DEFINITIONS

When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the terms:

5.1 "Federal Reclamation Laws" or "Reclamation Laws" shall mean the Act of June 17, 1902, 32 Stat. 388, and all acts amendatory thereof or supplementary thereto.

5.2 "Basin Project Act" shall mean the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, as amended, which is a supplement to the Federal Reclamation Laws.

5.3 "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

5.4 "Contracting Officer" shall mean the Secretary or his authorized designee acting in his behalf.

5.5 "Contractor" shall mean the Central Arizona Water

Conservation District, organized pursuant to Arizona Revised Statutes, Section 48-3701 et seq.

5.6 "Service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties of Arizona and such other counties as may hereafter become part of the District, exclusive of any Indian reservation land lying wholly or partly within said Counties.

5.7 "Subcontractor" shall mean any irrigation district, municipality, individual, or any entity which enters into a water service subcontract with the United States and the Contractor in furtherance of the provisions of the Basin Project Act.

5.8 "Central Arizona Project" or "project" shall mean the project and works authorized by Section 301(a) of the Basin Project Act and constructed by the United States pursuant to the provisions of said Act and this contract.

5.9 "Project works" shall mean the principal works described in Section 301(a) of the Basin Project Act, and appurtenances thereto, or as modified pursuant to Article 6.4 hereof, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

5.10 "Water supply system" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt Gila and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

5.11 "Distribution works" shall mean those facilities constructed or financed by the United States under the authorization in Section 309(b) of the Basin Project Act for the primary purpose of

distributing the project water supply within the service area after said project water supply has been transported or delivered through the water supply system.

5.12 "Agricultural water" or "irrigation water" shall mean project water used primarily in the commercial production of agricultural crops or l .estock, including domestic use incidental thereto, on tracts of land operated in units of more than 5 acres.

5.13 "Miscellaneous water" shall mean water delivered from the project, or by exchange for project water, for recreational and fish and wildlife purposes at other than project facilities and shall have a lesser priority of use than agricultural water.

5.14 "Municipal and industrial water," herein referred to as "M&I water," shall mean project water other than agricultural or miscellaneous water delivered by means of the project works.

5.15 "Lands not having a recent irrigation history" shall mean, except where otherwise determined by the Secretary for efficiency of subcontractor's operation, lands which the Secretary determines were not irrigated during the period September 30, 1958, to September 30, 1968.

5.16 "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

5.17 "Exchange water" shall mean Colorado River water made available in exchange for or in replacement of existing supplies from surface sources other than the mainstream of the Colorado River.

5.18 "Transferred works" shall mean such facilities of the water supply system or of other construction stages as to which OM&R

responsibility is transferred from the United States to the Operating Agency.

5.19 "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

5.20 "Transfer notice" shall mean a written notice or notices, numbered consecutively, which the Contracting Officer transmits to the Operating Agency and which shall designate:

(a) the transferred works;

(b) items of equipment and supplies transferred to the Operating Agency; and

(c) the date upon which such transfer will be effected.

5.21 "Gila River system waters" shall mean waters of the Gila River and tributaries thereof east of the Yuma-Maricopa County line.

5.22 "Notice of completion" shall mean the notice which the Contracting Officer issues to Contractor to announce the substantial completion of a construction stage. Each such notice of completion shall include the estimated amount of the repayment obligation for the construction stage to which the notice pertains, the date of initiation of repayment for the construction stage and indicate the amount and due date for the first payment for the construction stage.

5.23 "Development Fund" shall mean the separate fund, known as the Lower Colorado River Basin Development Fund, established in the Treasury of the United States pursuant to Section 403(a) of the Basin Project Act.

5.24 "Year" shall mean the period January 1 through the next

succeeding December 31.

5.25 "Contractor's Construction Cost Repayment Obligation," hereinafter referred to as "repayment obligation," shall mean the total amount of all construction costs including related construction claims and interest thereon, OM&R costs during construction, and interest on costs allocated to the M&I water and power functions during construction, of the Central Arizona Project, incurred therefor and as determined by the United States and further described in Article 6.2 hereof, excluding reimbursable costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors, and which is determined by the Secretary, after consultation with the Contractor, to be allocable to and repayable by the Contractor in accordance with the provisions of the Basin Project Act and this contract.

5.26 "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from water contracted for from the Central Arizona Project, but shall not include any water delivered through the project works for ground water recharge purposes.

5.27 "Project water" shall mean (a) all water allocated by the Secretary for project purposes by Federal Register notice dated March 24, 1983, and any subsequent reallocation by the Secretary as contemplated in paragraph 6 of said Federal Register notice, which water is available pursuant to contracts with the Secretary from: (1) the Colorado River; (2) Central Arizona Project dams and reservoirs; and (3) return flows captured by the Secretary for project use; (b) any water

delivered to entities in Arizona, through the project works, as a replacement supply for Cliff Dam; (c) water delivered to water users in Arizona, through the project works, in exchange for water delivered to users in New Mexico from or by means of the project works; and (d) any additional water not included in (a) above, that is required to be delivered by the Secretary through the project, pursuant to the Ak-Chin Water Rights Settlement Act of 1978 (Public Law 95-328), as amended on October 19, 1984 (Public Law 98-530); the Southern Arizona Water Rights Settlement Act of October 12, 1982 (Title III of Public Law 97-293); and, subject to the execution of a settlement agreement by the Contractor providing for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community and to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (Public Law 100-512), up to 22,000 acre-feet annually of Colorado River water to be delivered through the project works in accordance with said settlement agreement and legislation.

5.28 "Indian lands" shall mean the lands within any Indian reservation for which an allocation of project water has or will be made by the Secretary for delivery through project works.

5.29 "Navajo Project" shall mean the interests of the United States in the Navajo Generating Station and the Transmission System, or any replacement thereof, as authorized by Section 303 of the Basin Project Act and as described in contracts entered into pursuant to that Act.

5.30 "Construction stage" shall mean any one of the following: (1) the water supply system; (2) New Waddell and Modified Roosevelt Dams; (3) replacement features or programs for Cliff Dam; (4) Tucson terminal storage; (5) Hooker Dam or suitable alternative; and (6) Buttes Dam.

5.31 "Plan 6" shall mean Plan 6 for the Regulatory Storage Division of the Central Arizona Project as approved by Record of Decision of the Secretary dated April 3, 1984 as amended and supplemented by Records of Decision of the Secretary dated May 20, 1986 (Supplement One) and June 17, 1988 (Supplement Two).

5.32 "Allocable cost" shall mean (a) with respect to the project, the total project cost less (1) the cost of non-Indian distribution works, (2) the cost of the safety of dams component of Plan 6, (3) the cost of Indian distribution systems, (4) the cost of the Colorado River Division and the New Mexico fish hatchery, (5) the cost of cultural resources studies, (6) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (7) the costs of Charleston Dam and San Pedro Aqueduct, (8) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (9) such other costs as determined appropriate by the Contracting Officer; and (b) with respect to each construction stage, the total cost of such stage less that portion of the following costs associated with such stage: (1) the cost of the safety of dams component of Plan 6, (2) the cost of cultural resources studies, (3) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (4) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (5) such other costs as determined appropriate by the Contracting Officer.

5.33 "OM&R Transfer Contract" shall mean the August 5, 1987, contract entitled "Contract Between the United States of America and the

Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities" (Contract No. 7-07-30-W0167), and any amendment or revision thereof.

5.34 "Overall repayment period" shall mean the period of time beginning with initiation of repayment of the first construction stage and ending with final payment of the last construction stage.

5.35 "Plan 6 Funding Agreement" shall mean the April 15, 1986, agreement entitled "Agreement Among the United States, the Central Arizona Water Conservation District, the Flood Control District of Maricopa County, the Salt River Agricultural Improvement and Power District and Salt River Valley Water Users' Association, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, the State of Arizona, and the City of Tucson for Funding of Plan Six Facilities of the Central Arizona Project, Arizona, and for other Purposes," as it may be supplemented or amended.

5.36 "Permanent service" shall mean that water supply service commencing in the year following substantial completion of the water supply system and continuing in perpetuity.

5.37 "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be amended or revised.

5.38 "Project power" shall mean the United States' entitlement to capacity and energy from the Navajo Project.

6. PROJECT CONSTRUCTION

6.1 Agreement of the United States. Subject to the terms and

conditions of this contract and within the limits of the funds made available therefor by Congress, the United States will expend toward the construction of the project, exclusive of interest costs during construction, $832,180,000 based on 1967 cost estimates, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein, or so much of such amount, as in the opinion of the Secretary, is necessary to construct said project, whichever amount is the lesser. The aforementioned amount includes the United States' costs of participation in the Navajo Project.

6.2 Costs of Project.

(a) The estimated construction cost of $832,180,000 for the project, based upon 1967 prices, has been determined as follows:

	$ 1,000's
Main System	
Granite Reef Division	407,740
Orme Division	42,340
Salt-Gila Division	47,170
Tucson Aqueduct (Colorado River source)	46,300
Buttes Dam	35,240
Navajo Project	106,000
Subtotal	684,790
Other Separate Features	
Hooker Dam or suitable alternative	31,730
Charleston Dam and San Pedro Aqueduct (San Pedro River source)	36,420
Subtotal	68,150
Miscellaneous Features	
*Gila River Division	5,250
Indian Distribution System	19,970
Colorado River Division	42,450
Drainage System	11,570
Subtotal	79,240
Total Project	$832,180

*Note: Fish hatchery costs, some of which may be located on the Colorado River.

Provided, however, That (i) the adjustment provisions of Article 6.1 apply

to the total construction costs of the project and not to the costs of the individual line items set out in this Subarticle 6.2(a), and (ii) in accordance with provisions of Article 6.4 herein, the references to the individual line items set out in this Subarticle 6.2(a) are not to be deemed a determination that each of the features referred to in the individual line items will be constructed or that costs will be incurred for each of said individual line items based upon a percentage which the estimated costs for each individual line item bears to the project's total estimated construction costs.

(b) The Central Arizona Project costs incurred by the United States which are to be repaid by Contractor shall include the share allocated to the Contractor of (i) construction costs of the project, (ii) all expenses of whatsoever kind or nature heretofore or hereafter incurred by the United States in connection with, growing out of, or resulting from the construction, and (iii) the OM&R during construction of project works. The aforementioned share of allocated costs shall also include, but shall not be limited to, interest during construction on costs allocated to the M&I water and power functions, the cost of labor, materials, equipment, engineering, legal services, surveys, investigations, property, superintendence, administration, overhead, general expenses, special services, damages of all kinds and character, inspection, repair, and protection of project works and water supply, and the costs of all lands, interests in lands, and rights-of-way acquired by the United States for the project, all as determined by the Secretary.

6.3 Principal Works of the Project. The works and facilities to be constructed under this contract shall consist of the following principal

works:

(a) A system of main conduits and canals, including the Havasu Pumping Plant and a main canal and pumping plants (Granite Reef Aqueduct and pumping plants), for diverting and carrying water from Lake Havasu to the confluence of the Salt and Verde Rivers, which system will have a capacity of 3,000 cubic feet per second;

(b) Salt-Gila Aqueduct and pumping plant;

(c) Tucson Aqueduct and pumping plants;

(d) New Waddell and Modified Roosevelt Dams;

(e) replacement features or programs for Cliff Dam;

(f) Tucson Terminal Storage (if approved by the Secretary);

(g) Buttes Dam and Reservoir;

(h) Hooker Dam and Reservoir or suitable alternative which shall be constructed in such manner as to give effect to the provisions of Section 304(f) of the Basin Project Act;

(i) Charleston Dam and Reservoir and the San Pedro Aqueduct;

(j) related canals, regulating facilities, and electric transmission facilities required for the operation of said principal works;

(k) related water distribution and drainage works; and

(l) appurtenant works.

No works or facilities for the treatment of water are included in the project works to be constructed by the United States. Nothing contained herein shall be construed to indicate the order in which the aforedescribed works will be constructed.

6.4 Changes in Project Works. Should the Secretary, either before or during construction, determine it to be in the best interests of

the project, he may, upon the completion of the studies currently being made or to be made, including land classifications, hydrological, engineering, geological, sedimentation, water supply, and repayment ability, and after consultation with the Contractor, change the location, size, or capacity of any of the project works, or may eliminate works, or add works to those described above, and the Secretary's decision on such changes, eliminations, and additions shall be conclusive.

6.5 Construction Conditions. The United States shall be under no obligation to commence or, having commenced, to continue construction of project works until transfer from the State of Arizona of such State-owned lands or interests therein, in a form acceptable to the Attorney General of the United States, as the Secretary determines is necessary in the construction, operation, or maintenance of the project.

6.6 Annual Work Program. During construction of the project works the Contracting Officer will consult with the Contractor and/or with any subcontractor through or within whose service area project works are to be constructed to achieve maximum coordination between such construction program and the annual programs of any affected subcontractor. Within 30 days following the enactment by Congress and Presidential approval of annual or supplementary appropriation acts and the allotment of funds thereunder for continued construction of the project, the United States will furnish the Contractor with a notice and statement showing the proposed construction program for the balance of the current fiscal year and for the following fiscal year or years. If so requested in writing by the Contractor within 30 days of its receipt of such notice, the Secretary will consult with the Contractor and/or the affected subcontractor with respect

to the proposed program. The action of the Contracting Officer concerning the program after such consultation shall be final.

6.7 Inability of the United States to Complete Project on Basis of Cost Estimates. If construction of the project works shall have been commenced but, prior to completion, the Secretary determines that the cost of constructing the project will exceed the maximum amount to be expended therefor by the United States as provided for in Article 6.1 hereof, the Secretary may after consultation with the Contractor terminate construction and declare the obligations of the United States hereunder with regard to completion of construction of the project to have been fulfilled. If appropriations for the continuance and/or completion of construction in amounts sufficient in the opinion of the Secretary to complete said construction are authorized by Congress and are available, the Secretary shall consult with the Contractor and shall make continuation of construction contingent upon the execution of an amendatory contract with the Contractor wherein the Contractor's maximum repayment obligation is increased so as to cover the increased reimbursable costs as determined by the Secretary; Provided, however, That the Contractor shall not utilize any part of the completed or unfinished project facilities in the absence of written agreement with the Secretary for reimbursement therefor.

7. PROJECT OPERATION, MAINTENANCE, AND REPLACEMENT

7.1 Operation and Maintenance and Water Deliveries by the United States Prior to Completion of Construction. Except as provided in the OM&R Transfer Contract, prior to completion of project works by the United States, as determined and announced to the Contractor in writing by the Secretary, the United States will operate and maintain said project

facilities. The cost of said OM&R allocated to the Contractor shall be included in the Contractor's repayment obligation; Provided, however, That said OM&R cost shall not be included with the project cost ceiling set out in Article 6.1 hereof. During the aforesaid period, project water, if available, may be disposed of by the Secretary at charges which the Secretary determines to be appropriate; Provided, however, That to the extent deemed feasible by the Secretary, preference will be given to subcontractors and Indian lands. Payment for water shall be made in advance by the water user. The places of measurement and delivery of said water shall be established by the Secretary after consultation with the Contractor. Except as provided in the OM&R Transfer Contract, the proceeds accruing from the disposal of such water shall be credited to the Development Fund and applied toward the costs of the project as determined by the Secretary.

7.2 Operation and Maintenance and Water Deliveries after Completion of Construction. Except as provided in the OM&R Transfer Contract and any future agreements for the transfer of OM&R of the project works or portions thereof, upon completion of construction of a construction stage or upon completion of construction of the project, the United States shall operate and maintain such construction stage or the project and shall make project water available to project water users.

8. DELIVERY OF WATER

8.1 Obligation of United States. Subject to the terms, conditions, and provisions set forth herein, the United States will deliver project water to Contractor and, during such periods as it operates and maintains the water supply system, the United States will also transport and

deliver said water to the subcontractors. After transfer of OM&R the United States will make deliveries of Colorado River water to the Operating Agency; deliveries of other project waters will be made pursuant to determinations made by the Secretary.

8.2 Term of Contract. Subject to the terms, conditions, and provisions set forth herein, this contract is for permanent service.

8.3 Conditions Relating to Delivery.

(a) The obligation of the United States to deliver water under this contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, dated September 30, 1968, 82 Stat. 885; the contract between the United States and the State of Arizona, dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of Arizona v. California et al., 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, as now issued or hereafter modified.

(ii) Executive A, Seventy-eighth Congress, Second Session, a treaty between the United States of

America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the water of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty.

(iii) The express understanding and agreement by the Contractor that this contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and the Contractor shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam,

Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to Contractor hereunder.

(iv) The right of the United States temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works whatsoever affecting, utilized or, in the opinion of the Secretary, necessary for delivery of water hereunder, it being understood that so far as feasible the United States will (1) do so during periods of low water demands and (2) give reasonable notice in advance of such temporary discontinuance or reduction.

(b) Delivery of Colorado River water by the United States under this contract shall be charged to the State of Arizona's apportionment under the aforementioned Supreme Court Decree of March 9, 1964, in Arizona v. California and will discharge to that extent the obligation of the United States to deliver water under the aforementioned contract between the United States and the State of Arizona, dated February 9, 1944.

8.4 Delivery Points. Colorado River water to be furnished to the Contractor pursuant to this contract will be delivered by the United States in the Colorado River at the point of diversion from Lake Havasu where the intake structures of the Havasu Pumping Plant are

constructed. Agua Fria and Upper Gila River system waters will be delivered to the Contractor at New Waddell and Buttes Dams, respectively. Delivery points for other project water supplies and for return flows will be determined by the Contracting Officer after consultation with the Contractor and/or the affected subcontractor therefor.

8.5 Measurement.

(a) The quantity of Colorado River water pumped from Lake Havasu for the project shall be measured by means of measuring devices to be installed as part of the project works. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available, estimate the amount of water delivered to the Contractor.

(b) Deliveries of project water to the various subcontractors shall be measured by means of measuring devices to be installed as part of the project works at the points along the various aqueducts at which such water may be diverted for each of said subcontractors, and/or at the points in the various reservoirs formed by the dams constructed as part of the project works at which such water may be diverted for subcontractors and/or at the points where return flow may be delivered. These points of measurement will be established by the Secretary after consultation with Contractor and the affected subcontractor. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available and after consultation with the Contractor and the affected subcontractor, estimate the amount of water delivered to each such subcontractor. The Secretary shall at all times have access over any lands

and rights-of-way of a subcontractor for the purpose of inspecting and checking said measuring devices.

8.6 Responsibility for Distribution of Water after Leaving Water Supply System. Whether or not the United States operates and maintains the project facilities, the United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water after said water has been diverted from the water supply system. At such time as the Operating Agency assumes responsibility for the OM&R of project works, the responsibility for diversion, carriage, and transportation of the water through the water supply system shall be the sole responsibility of the Operating Agency. Responsibility for distribution of water beyond the water supply system shall be that of the subcontractors to whom said water is delivered from the water supply system. The United States, its officers, agents, and employees, shall not be liable for damage or claim of damage of any nature whatsoever for which there is legal responsibility arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water, and each subcontractor shall hold the United States, its officers, agents, and employees, harmless from any and all such claims.

8.7 Quantity of Water to be Delivered.

(a) The Secretary reserves the right to determine that quantity of Colorado River water to be released each year from Lake Mead for use by the Central Arizona Project pursuant to applicable law, which shall include the quantity of water which may be allocated by the Secretary for use on Indian lands.

(b) The quantity of Colorado River water available under

this contract for project purposes shall not exceed the quantity of water available to Arizona under the aforementioned Supreme Court Decree in Arizona v. California and in Arizona's water delivery contract with the United States after first providing for satisfaction of:

(i) present perfected rights and perfected rights described in Article II(D) of the Decree and the rights of other Federal reservations established prior to September 30, 1968; Provided, however, That the quantities of Colorado River water reserved to satisfy the aforesaid rights shall not, except as provided in said Decree, be reduced under any circumstances or for any reason whatsoever including, without limitation, a temporary use permitted by the Secretary by other water users in Arizona, California, or Nevada, of water reserved pursuant to the foregoing but not needed during any calendar year; And provided further, That no rights to the recurrent use of such water shall accrue by reason of said temporary use; and

(ii) the quantities of water provided for in all water delivery contracts between the United States and water users in Arizona as of September 30, 1968.

(c) The quantity of Colorado River water available under this contract for project purposes, including water for use on Indian lands

shall have the same priority as to delivery as the quantities of Colorado River water delivered pursuant to water delivery contracts, Federal reservations of water, and other arrangements between the United States and water users in Arizona entered into subsequent to September 30, 1968, for use of Colorado River water on Federal, State or privately owned lands in Arizona in total quantities not to exceed 164,652 acre-feet of diversions per year; Provided, however, That the Contractor shall hold the United States, its officers, agents, employees, and successors or assigns, harmless as to any and all claims for damages to persons or to property direct or indirect and of whatever nature, arising out of or which may in any manner be connected with the operation and/or effect of this Subarticle.

(d) The limitation on contracting in Subarticle 8.7(c) above shall not apply to contracts with holders of present perfected rights to Colorado River water in Arizona or to the Secretary's order of November 24, 1982, reserving Colorado River water for the Cibola National Wildlife Refuge. Nothing in Subarticle 8.7(c) shall restrict the right of the Secretary under water service contracts referred to in said Subarticle to terminate and/or reduce any entity's entitlement to Colorado River water and to make that entitlement available to other water users in Arizona.

(e) During any year when the subcontractors cannot use any portion of their entitlement to project water, and such water cannot be resold or exchanged in accordance with the terms and conditions of the water service subcontracts, the Contractor shall have the right in its discretion to resell any or all of such water or to use any or all of such water for ground water recharge purposes, including the subsequent recovery and resale

of such water, subject to Federal law, including but not limited to the Reclamation Reform Act of 1982, State of Arizona law, and such rules and regulations as the Secretary may deem appropriate. Subject to the terms and conditions of water service subcontracts, the water orders of all subcontractors shall be met before any project water is made available to the Contractor under this provision.

8.8 Subcontracts.

(a) The United States shall be a party to subcontracts.

(b) The Secretary and the Contractor shall require in each subcontract that:

(i) unless and until otherwise provided by Congress, water from the Central Arizona Project shall not be made available directly or indirectly for the irrigation of lands not having a recent irrigation history, as determined by the Secretary, except in the case of Indian lands, national wildlife refuges, and, with the approval of the Secretary, State-administered wildlife management areas;

(ii) there be in effect measures, adequate in the judgment of the Secretary and the Contractor, to control expansion of irrigation from aquifers affected by irrigation in the Contractor's service area and to reduce pumping of ground water in the agricultural subcontractors' service areas by the amount of project water received by said agricultural subcontractors;

(iii) the canals and distribution systems through which water is conveyed after its delivery to the subcontractors shall be provided and maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses;

(iv) neither the Secretary, the Contractor nor any subcontractor shall pump or permit others to pump ground water from within the exterior boundaries of the service area of a subcontractor receiving water from the Central Arizona Project for any use outside of said subcontractor's service area unless the Secretary, the Contractor, and such subcontractor shall agree, or shall have previously agreed, that a surplus of ground water exists and that drainage is or was required;

(v) except as otherwise agreed by the Contracting Officer, neither the Contractor nor any subcontractor shall sell or otherwise dispose of or permit the sale or other disposition of any project water, including return flows, for use outside the Contractor's service area;

(vi) irrigation water made available thereunder may be made available by the Secretary for M&I purposes if and to the extent that such water is no longer required by the subcontractor for irrigation purposes and shall be made available in all cases

where lands receiving project water have been converted to municipal and industrial use; Provided, however, That subcontracts effectuating such transfers are subject to the approval of the Secretary and the Contractor, which approval shall not be withheld unreasonably; And provided further, That it shall be deemed unreasonable for the Secretary or the Contractor to withhold such approval on the basis that the right to convert from irrigation to M&I use for a specific development could better be exercised in some other subcontractor's service area. The water so converted from irrigation to M&I purposes will be delivered with the same priority and at the same rate per acre-foot as other M&I water. Likewise, subcontracts for furnishing water for M&I purposes, including, but not limited to, ground water recharge to the extent ground water recharge is consistent with Arizona law, shall provide that, if water to be delivered thereunder is not presently required for such purposes, such water may be made available by the Secretary to other users; Provided, further, That the subcontractor shall be relieved of its payment obligation under its subcontract only to the extent of the amount paid by such other users;

(vii) the acreage limitation provisions of Reclamation Laws shall apply solely to agricultural water service;

(viii) except as specifically provided therein, it shall be the provisions of this contract which shall be controlling in the event of any inconsistency between this contract and any subcontract;

(ix) the subcontractor shall levy all necessary assessments, tolls, and other charges and shall use all of the authority and resources available to the subcontractor to collect the same in order that the subcontractor may meet its obligations thereunder to make in full all payments required under said subcontract on or before the date such payments become due and to meet other obligations under the subcontracts;

(x) the subcontractor establish, maintain, and provide the United States and the Contractor with land, water use, and crop census records.

8.9 Shortages. As provided in Section 301(b) of the Basin Project Act, Article II(B)(3) of the Decree of the Supreme Court of the United States in Arizona v. California, 376 U.S. 340, dated March 9, 1964, shall be so administered that in any year in which, as determined by the Secretary, there is insufficient mainstream Colorado River water available for release to satisfy the annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada, diversions from the mainstream of the

Colorado River for the Central Arizona Project and for other uses in Arizona under contracts or other agreements with the United States executed subsequent to September 30, 1968, shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under contracts existing as of September 30, 1968, with the United States by diversion works heretofore constructed, and by other Federal reservations in California of 4,400,000 acre-feet of Colorado River water, and by users of the same character in Arizona and Nevada. Water users in the State of Nevada shall not be required to bear shortages in any proportion greater than would have been imposed in the absence of said Section 301(b), nor shall said Section affect the relative priorities, among themselves, of water users in Arizona, California, and Nevada which are senior to diversions for the Central Arizona Project, or amend any provisions of said Decree. The aforesaid limitation stated in Section 301(b) shall not apply so long as the Secretary shall determine and proclaim that means are available and in operation which augment the water supply of the Colorado River system in such quantity as to make sufficient Colorado River mainstream water available for release to satisfy annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada.

8.10 Rate of Diversions of Colorado River Water. Subject to (a) the first proviso in Section 301(a) of the Basin Project Act, (b) the provisions of Subarticle 10.6(b) hereof, and (c) the provisions of Subarticle 8.7(a) hereof, any capacity in the Granite Reef Aqueduct in excess of 2,500 cubic feet per second may be utilized in the operations of

the project so as to maximize project benefits; Provided, however, That the use of such capacity shall not result in the annual diversion of a quantity of water in excess of the project's legal entitlement under the Basin Project Act.

8.11 Priority in Case of Shortage.

(a) Subject to the provisions of Section 304(e) of the Basin Project Act and the Secretary's allocation decisions published in the Federal Register on December 10, 1980, and March 24, 1983, any project water as defined in Subarticle 5.27(a) hereof, furnished through project facilities shall, in the event of shortages thereof, be reduced pro rata until exhausted, first for miscellaneous uses and next for agricultural uses, before such project water furnished for M&I uses is reduced. Thereafter, such project water for M&I uses will be reduced pro rata among all M&I water users. Each subcontract or other water delivery arrangement entered into pursuant to this contract shall so provide. This article shall not apply to Indian uses; Provided, however, That the relative priorities between Indian and non-Indian uses shall be as determined by the Secretary. Notwithstanding the provisions of this Subarticle, project water made available as a result of construction and operation of modifications to Roosevelt Dam as part of Plan 6 shall be distributed as provided in the Plan 6 Funding Agreement, and shall not be subject to reduction in the event of shortages of other project water supplies.

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

8.12 No Guarantee of Availability of Water. The United States

assumes no responsibility with respect to the quantity of water available for delivery pursuant to this contract. In no event shall the United States, its officers, agents, or employees, be liable for any damages, direct or indirect, of whatsoever nature, arising out of or in any way connected with any suspension or reduction in the delivery of water pursuant to this contract or with any shortage in the quantity of water available for delivery hereunder or to any subcontractor for any cause whatsoever including, but not limited to, drought, delay in the construction of the Navajo Project, the failure of the Navajo Project to be completed, or the lack of power for pumping.

8.13 Secretarial Control of Return Flow.

(a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of the Contractor as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for project use return flows within the boundaries of Contractor if in his judgment such return flow is not being put to a beneficial use. Any subcontractor may sell its return flow; Provided, however, That except as otherwise agreed by the Contracting Officer, such return flow may not be sold for use outside the Contractor's exterior boundaries; And provided further, That if the price received for such return flow is higher than the price paid for such project water, the amount of the excess price shall be paid by such subcontractor to the Contractor for application against the Contractor's repayment obligation to the United States.

(b) Any return flow captured by the United States and determined by the Secretary to be suitable and available for use on lands

within the service area and/or by any subcontractor therein may be delivered by the United States to a subcontractor as a part of the water supply for which the subcontractor contracts hereunder and such water shall be accounted and paid for pursuant to the provisions hereof.

8.14 Water and Air Pollution Control. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

8.15 Quality of Water. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of project water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer or the Operating Agency. Neither the United States nor the Operating Agency warrants the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

8.16 Exchange Water. Where the Secretary determines that a subcontractor is physically able to receive Colorado River mainstream water in exchange for or in replacement of existing supplies of surface water from sources other than the Colorado River to provide water supplies for users upstream from New Waddell, Modified Roosevelt and Buttes Dams, the Secretary may require that said subcontractor agree to accept said mainstream water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act.

8.17 Rights Reserved to the United States to Have Water Carried by Project Facilities. As a condition to the construction of project facilities and the delivery of water hereunder, the Contractor agrees that all project facilities will be available for the diversion, transportation, and carriage of water for Indian and non-Indian uses pursuant to arrangements or contracts therefor entered into on their behalf with the Secretary. In the event the responsibility for the OM&R of project facilities is transferred to and assumed by the Operating Agency, such transfer shall be subject to the condition that the Operating Agency shall divert, transport, and carry such water for such uses pursuant to the provisions of the aforesaid arrangements or contracts; Provided, however, That the aforesaid arrangements or contracts will include provisions for the payment of applicable construction costs and OM&R costs in accordance with Articles 9.3 and 9.6 of this contract.

8.18 Wheeling Non-Project Water. After taking into consideration the water delivery requirements of contracts for project water service and subject to availability of project capacity, non-project water may be wheeled through project facilities pursuant to wheeling agreements between the Contractor and the entity desiring to use project facilities for wheeling purposes. All such agreements shall be subject to the approval of the Contracting Officer who shall consider, among other things, the impact that the wheeling of such non-project water will have on the quality of project water. The Contractor and the Contracting Officer shall jointly develop a standard form of wheeling agreement including the rate structure for wheeling non-project water. All wheeling charges shall be paid to the Contractor by the entity contracting for the wheeling of non-project water.

The Contractor shall be entitled to retain revenues from wheeling charges sufficient to cover all OM&R costs associated with wheeling such non-project water, plus an administrative charge to be jointly determined by the Contractor and the Contracting Officer. All revenues from wheeling charges in excess of the OM&R costs and administrative charges shall be remitted by the Contractor to the Contracting Officer and deposited into the Development Fund.

8.19 Use of Project Power to Wheel Non-Project Water. If the energy requirements necessary for the pumping of project water are met and subject to the requirements of the Navajo Power Marketing Plan published in the Federal Register on December 21, 1987, project power may be used to wheel non-project water through project facilities under such conditions of use, including amounts, times of use, losses, costs, and other conditions as are established by the Contractor and approved by the Contracting Officer.

9. PAYMENT OF PROJECT COSTS ALLOCATED TO CONTRACTOR

9.1 Allocation of Construction Costs.

(a) Upon completion of each construction stage, the Contracting Officer will allocate costs to the various project purposes using the separable costs-remaining benefits procedure.

(b) For repayment purposes the reimbursable cost allocated to irrigation and M&I water by the separable costs-remaining benefits procedure will be combined and will hereinafter be termed the "water supply allocation." Upon completion of each construction stage, and at the periodic intervals specified in Subarticle 9.3(d), suballocation of the water supply allocation will be made to the irrigation and M&I water functions proportional to the water estimated to be used for each purpose

during the repayment period of each construction stage. The cost thus suballocated to the irrigation function will hereinafter be termed the "interest-free allocation." The cost thus suballocated to the M&I water function shall be added to the cost allocated to the commercial power function, plus interest during construction for both, and the sum will hereinafter be termed the "interest-bearing allocation."

(c) During construction, simple interest at the rate of 3.342 percent per annum shall be charged on costs allocated to the interest-bearing function as adjusted by the Secretary (i.e., net disbursements reduced by contract holdbacks, revenues applied to construction cost, and nonreimbursable expenses financed from construction funds). The total amount of all interest thus accumulated through the construction period prior to the date of completion of each construction stage shall be added to and become part of the actual construction cost of each construction stage. Interest during construction shall not accrue during any period in which construction is deferred or postponed by the United States as a result of a national emergency, as determined by the Secretary, if authority to forego such interest exists or is made available to the Secretary.

9.2 Repayment Concepts.

(a) Costs suballocated to non-Indian irrigation water will be paid by the subcontractors to the Contractor on the basis of their ability to pay as determined by the Secretary.

(b) Costs allocated to commercial power and costs suballocated to M&I water use shall be combined and repaid with interest at a rate of 3.342 percent per annum on the unpaid balance.

(c) Reimbursable costs allocated to recreation and fish

and wildlife are anticipated to be covered by a separate contract and repaid by the beneficiaries thereof.

(d) Repayment of costs allocated to irrigation of Indian lands shall be governed by the provisions of Section 402 of the Basin Project Act.

(e) Repayment of the project will occur by construction stages, with each stage having a separate 50-year repayment schedule. Upon completion of each cost allocation study referred to in Subarticle 9.1(a), subsequent to the initial study associated with the first construction stage, the Contractor's repayment obligation and the obligation allocated to each construction stage will be adjusted based on the latest cost allocation study, and the Contractor will be provided with a revised repayment schedule for the project and each construction stage. The Contracting Officer will adjust previous principal and interest payments made by the Contractor to reflect the new repayment schedule. For each year where an adjustment in payments is necessary, there will be an over or underpayment which will accrue with interest at the rate of 3.342 percent per annum (compounded annually) to the adjustment date. If the adjustment indicates that the Contractor overpaid principal and interest, the Contractor shall be entitled to a credit against its next payments to the United States. Conversely, if the Contractor owes additional principal and interest to the United States, such amount shall be paid to the United States by the Contractor within 12 months of receipt of a statement therefor from the Contracting Officer. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

9.3 Contractor's Construction Cost Repayment Obligation.

(a) The Contractor's repayment obligation shall consist of the total cost allocated to the water supply and power functions plus OM&R during construction and interest during construction on costs allocated to the M&I water and power functions, but shall not include costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors. Such entities shall include but not be limited to Indian tribes and councils in central Arizona receiving project water and the New Mexico recipients of water service from Hooker Dam or suitable alternative. The costs to be excluded shall be calculated as follows:

(i) Costs excluded from the Contractor's repayment obligation for New Mexico water service shall be determined by multiplying the project costs allocated to the water supply function by the ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to water users in Arizona in exchange for water delivered to users in New Mexico from or by means of project works, by the total quantity of Colorado River water projected to be delivered by the project throughout the overall repayment period.

(ii) The amount of other project costs which shall be excluded from the Contractor's repayment obligation shall be determined by multiplying the

project costs allocated to the water supply function by a ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to entities other than the Contractor, the subcontractors, and those users in New Mexico to whom water has been made available through the construction of Hooker Dam or suitable alternative by the total quantity of project water projected to be delivered throughout the overall repayment period; Provided, That project water projected to be delivered to such users will be computed based on an assumption of full development not later than the year 2005.

(b) The costs determined under Subarticles 9.3(a)(i) and (ii) above shall be subtracted from the water supply costs obtained from the separable costs-remaining benefits procedure to determine the Contractor's water supply costs. The Contracting Officer shall suballocate the Contractor's water supply costs to each of the construction stages based on the ratios obtained by dividing the allocable cost of the construction stage by the allocable cost of the project (see Operation 1, Exhibit "A"). The water supply costs assigned to each construction stage are then further suballocated between irrigation and M&I water use in proportion to projected total water deliveries to each function over the 50-year repayment period of each construction stage (Operation 2, Exhibit "A"). The summarization of the suballocations to each construction stage determines the total water

supply cost to be assigned to irrigation and M&I water use (Operation 3, Exhibit "A"). To determine the Contractor's repayment obligation, the Contractor's water supply suballocation to irrigation and M&I water uses, and the power allocation from the separable costs-remaining benefits procedure, shall each be adjusted for any revenues received by the United States prior to the notice(s) of completion and for any contributions received by the United States under the Plan 6 Funding Agreement for the features constructed in that stage, and for the 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and pumping plants (see Article 9.7) to determine the net amount of each function assigned to the Contractor (Operation 4, Exhibit "A"). The Contractor's repayment obligation shall be the summation of the net amount for each function.

(c) Once the Contractor's estimated or final repayment obligation has been determined by the Contracting Officer, the obligation shall be allocated to each construction stage based on the ratio obtained by dividing the allocable cost of each construction stage by the allocable cost of the project. Each construction stage will have a separate 50-year repayment period. The repayment obligation for each stage will be divided into interest-bearing and interest-free components. The interest-free component shall be the amount allocable to irrigation purposes for the stage. The interest-bearing component will be the amount obtained by subtracting the irrigation allocation for the stage from the obligation for the stage. The principal payments for each stage shall be determined by applying the percentages in Subarticle 9.3(f) to the repayment obligation for each stage. The total payment for each stage for any year shall be equal to the principal payment plus interest at the rate of 3.342 percent

per annum on the unpaid interest-bearing component of the repayment obligation for each stage. For the water supply system, the portion of each principal payment which is made by the Contractor from irrigation revenues received by the Contractor each year will be used by the United States to reduce the interest-free obligation. The remaining portion of the principal payments made by the Contractor each year for the water supply system will be used by the United States to reduce the interest-bearing obligation, and once the interest-bearing obligation has been retired, the entire principal payment made by the Contractor will be applied by the United States toward the interest-free obligation. For the other construction stages, the entire principal payment made by the Contractor each year for such stages will be applied by the United States to reduce the interest-bearing obligation first, and once such obligation has been retired, to reduce the interest-free obligation.

(d) At 7-year intervals following the determination of the Contractor's repayment obligation for the water supply system, or at more frequent intervals if it becomes apparent to the Contracting Officer that a significant change in water use has or will occur, until such time as the interest-bearing obligation for each construction stage has been repaid, the Contracting Officer will re-estimate the proportions of total water deliveries to irrigation and M&I water use over the 50-year repayment period for each stage. At such intervals, the Contracting Officer will adjust the original interest-bearing and interest-free allocation for each stage based on the new estimates and recalculate all preceding interest payments. Differences between amounts owed and amounts paid by the Contractor shall be adjusted by the Contracting Officer, who shall apply a credit against the

Contractor's next payment due or notify the Contractor of the additional amount due, as the case may be. All such adjustments shall include interest at the rate of 3.342 percent per annum (compounded annually). Any additional payments required from the Contractor shall be made within 12 months of the Contractor's receipt of a statement from the Contracting Officer therefor. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

(e) The Contracting Officer will notify the Contractor of (i) its estimated repayment obligation when construction of the first construction stage is substantially complete and upon completion of each subsequent construction stage, and (ii) the actual repayment obligation when the final construction stage has been completed, as determined by the Contracting Officer. In the event that the project ultimately consists only of the water supply system, New Waddell Dam, and Modified Roosevelt Dam, the Contractor's actual repayment obligation shall be limited to $2.0 billion. If prior to completion of construction of such features the Contracting Officer determines that the Contractor's repayment obligation for such features will exceed $2.0 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation. If construction of any other construction stage will result in an increase in the Contractor's repayment obligation by an amount equal to or less than the respective amount identified in Exhibit "B," which is attached hereto and made part of this contract, the Contractor's repayment ceiling may, after consultation with the Contractor, be increased by the

Contracting Officer by an amount equal to or less than the respective amount identified in Exhibit "B" by written notice thereof from the Contracting Officer to the Contractor. If construction of such other construction stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B," the Contracting Officer shall consult with the Contractor and the Contractor and the Contracting Officer shall agree upon one of the following courses of action prior to initiation of construction of such construction stage: (1) that additional repayment ceiling be made available from other construction stages, in which event the Contractor's repayment ceiling will be increased to the agreed-to amount by written notice from the Contracting Officer to the Contractor; or (2) that this contract be renegotiated to increase the Contractor's repayment ceiling; Provided, That these courses of action shall also apply in the event that, prior to completion of construction of such stage, the Contracting Officer determines that the construction of such stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B."

(f) Annual percentages of the repayment obligation for each construction stage shall be those set out in the following schedule or any revision thereof mutually agreed upon:

Repayment Year	Percent of Repayment Obligation (Annual)
1-7	1.0
8-14	1.3
15-21	1.6
22-28	2.0
29-35	2.6
36-42	2.7
43-49	2.7
50	2.7

(g) In the event that the Secretary contracts for delivery of non-project water under the provisions of Article 10.1, capital charges associated with such delivery shall be calculated, charged, and utilized in the same manner as capital charges deposited in the Development Fund pursuant to Article 8.18.

9.4 Payment of Contractor's Construction Cost Repayment Obligation.

(a) The Contractor shall make annual payments to the United States, to be credited to the Development Fund, which shall be sufficient, when combined with accruals from the other sources described in Section 403(f) of the Basin Project Act, the Hoover Power Plant Act of 1984, and other miscellaneous revenues, including but not limited to net wheeling charges, to effect repayment of the repayment obligation for each construction stage within a period of not more than 50 years beginning with the year following substantial completion of each construction stage. The Contractor's first payment shall be due on or before January 15 of the year following the year in which the Secretary announces the substantial completion of each construction stage. Annual payments thereafter shall be due on or before January 15 of each following year.

(b) The Contractor agrees to make annual payments calculated by the Secretary as follows:

(i) Calculate the annual principal payments required by the schedule in Subarticle 9.3(f) or any revision thereof for each construction stage.

(ii) Add to (i) the annual interest, at 3.342 percent, on the unpaid balance of the interest-bearing

allocation for each construction stage.

(iii) Determine the total amount of all interest and principal payments due for all construction stages.

(iv) Subtract therefrom the revenues estimated to be available from the Development Fund anticipating a zero balance at the end of each year in the Development Fund.

(v) Make adjustments for differences between estimated and actual revenues for the preceding year.

(c) On or before each December 15, beginning with December 15 of the year in which the Secretary notifies the Contractor of the substantial completion of the first construction stage, the Secretary will notify the Contractor of the amount of the annual payment due on the following January 15, which has been determined by the Secretary on the basis of the aforesaid calculation.

(d) The Contractor may make additional payments on the repayment obligation at any time subject to such terms and conditions as may be agreed upon by the Contractor and the Contracting Officer; Provided, however, That all interest due is paid at the same time, whereupon appropriate adjustments in the schedule of future payments will be made by the Secretary, who shall as promptly as possible give the Contractor written notice of the adjusted repayment schedule.

(e) It is understood and agreed that the Contractor shall be obligated for the payments set forth in Subarticle 9.4(a) hereof and that regardless of the delinquency or default in payment of any charges

due to the Contractor from any subcontractor, or a diminution in the water supply available to the Contractor, or regardless of any other reason, the Contractor shall complete repayment of each construction stage within a 50-year period beginning in the year following the announcement by the Secretary of substantial completion of such construction stage.

9.5 Commercial Power Rates. The Secretary will, consistent with applicable law, periodically review and provide for appropriate adjustments in the rates established for the sales of power and energy, revenues from which contribute to the Development Fund.

9.6 Other Costs Borne by the Contractor.

(a) In addition to the payments provided for in Article 9.4 hereof, and subject to the provisions of Subarticle 9.6(d) hereof, during such periods as the United States operates and maintains completed construction stages, the Contractor shall make advance payments for OM&R costs incurred by the United States. The United States will furnish the Contractor with an estimate in writing at least 6 months prior to substantial completion of construction of the water supply system, of the OM&R cost due from the Contractor to the end of the then current year, together with an estimate of such cost for the calendar year immediately following. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer, the Contractor shall advance to the United States the payments for the estimated OM&R cost to the end of the then current year and without further notice or demand shall on December 15 of the then current year and on June 15 of the following year advance to the United States in equal semiannual installments the Contractor's share of the estimated cost, including supervision and

administrative expense for the OM&R of the water supply system. Advance payments shall be made in subsequent years by the Contractor to the United States on the basis of estimates to be furnished by the United States on or before November 15 preceding said subsequent year and the advances of said payments shall be due and payable in equal semiannual payments on the following December 15 and June 15. Said OM&R costs are the total annual OM&R costs of completed construction stages which are allocated to the irrigation and M&I water supply functions less (i) the costs described in Subarticle 9.6(c) hereof, and (ii) an amount determined by multiplying the total of said annual costs by the ratio obtained by dividing the estimated amount of project water projected to be delivered in the subsequent year to entities other than the Contractor, the subcontractors, and those entities in New Mexico to which project water will be made available from Hooker Dam or suitable alternative, by the total amount of project water estimated to be delivered for use in that year.

(b) Differences between actual OM&R costs and the estimated costs shall be determined by the Contracting Officer and shall be adjusted in next succeeding estimates; Provided, however, That if in the opinion of the Contracting Officer the amounts advanced by the Contractor for any year are likely to be insufficient to pay the above-mentioned OM&R costs during such year, additional and sufficient sums of money shall be paid forthwith by the Contractor to the United States upon notice thereof and demand therefor by the Contracting Officer; Provided, further, That the United States will give Contractor reasonable notice in advance of any such deficiency.

(c) The Contractor's obligation to pay said OM&R costs

of completed construction stages will be reduced to the extent that project water is made available for use in New Mexico following completion of Hooker Dam or suitable alternative. Said reduction will be in the proportion which the quantity of project water projected to be delivered to water users in Arizona, in exchange for Gila River system waters delivered to water users in New Mexico from or by means of project works, bears to the total quantity of Colorado River water projected to be delivered to the project that year.

(d) In the event that responsibility for OM&R of project facilities is transferred to and assumed by the Contractor, the Contractor shall be relieved of the obligation to make OM&R payments associated with such facilities under Subarticle 9.6(a) of this contract. In that event, the United States shall pay or provide for payment of OM&R costs associated with delivery of water to entities other than the Contractor and the subcontractors. Such costs shall be computed in accordance with Subarticle 9.6(a) of this contract. If the Contractor does not receive payment in advance for such costs, the Contractor shall have no obligation to deliver such water.

(e) During the Hoover Dam cost-repayment period, the Contractor shall pay to the United States the sum of $0.25 for each acre-foot of water pumped from Lake Havasu for miscellaneous and M&I water purposes as determined by the Contracting Officer. The quantity of water pumped for such purposes will be determined by the Contracting Officer at the end of each calendar year and the Contractor notified of the amount due by March 1 of each subsequent year. Payment shall be due on May 1 following notification. Said payment shall be credited to the Colorado River Dam Fund

established by Section 2 of the Boulder Canyon Project Act.

9.7 Repayment of Costs of Excess Capacity in Granite Reef Aqueduct. The costs of providing any capacity in the Granite Reef Aqueduct and pumping plants in excess of 2,500 cubic feet per second shall be repaid by Contractor from funds available to Arizona pursuant to the provisions of Section 403(f) of the Basin Project Act, or by funds from sources other than the Development Fund.

9.8 Ad Valorem Taxes, Assessments, Tolls, and Other Charges. Within the legal limits available to it, the Contractor shall levy ad valorem taxes upon the taxable property within the service area of the Contractor at rates determined necessary by the Contractor to raise funds which, together with the revenues from the sale of water and such financial assistance from the Development Fund as the Secretary determines is available therefor, are sufficient to meet the obligations of the Contractor to make in full all payments to the United States on or before the date such payments become due and to meet its other obligations under this contract.

9.9 Continuation of Payments After Project Payout. Following payment to the United States of the Contractor's final payment for the last construction stage, the Contractor shall continue to make annual payments to the United States to be credited to the Development Fund in amounts equal to the average annual principal payment for the project during the overall repayment period. In the event that no augmentation project, as contemplated in the Basin Project Act, has been authorized or is under active consideration by the Congress at the time project construction costs have been repaid in full, payments under this formula will be not required; Provided, however, That payments will commence after repayment of the

project costs pursuant to the formula, or any adjustment thereof agreed to by the parties, at such time as an augmentation project is authorized by Congress and the costs thereof allocated to the Contractor are determined by the Secretary.

9.10 Defaults.

(a) The Contractor shall pay a penalty on payments, installments or charges which become delinquent, computed at the rate of 1 percent per month on the amount of such delinquent payments, installments, or charges from and after the date when the same become due until paid.

(b) No water shall be furnished to the Contractor during any period in which the Contractor may be in arrears more than 12 months in the payments to the United States required by Article 9.4 hereof.

(c) All rights of action for breach of this contract are reserved to the United States as provided by Federal law.

10. GENERAL PROVISIONS

10.1 Other Contracts. The Secretary reserves the right to contract directly with other water using entities concerning water supply through project facilities. In the event this occurs, the provisions of Article 8.17 hereof shall be applicable.

10.2 Title to Project Works. Title to all water supply system works and all project facilities constructed pursuant to the Basin Project Act and this contract shall be and remain in the United States until otherwise provided by Congress.

10.3 Reserve Funds.

(a) (i) Commencing with notice of transfer of OM&R for the Granite Reef Aqueduct, including the Havasu Pumping Plant, the Contractor

shall accumulate and maintain an emergency OM&R reserve fund, which the Contractor shall keep available to meet costs incurred during periods of interruption of water service.

(ii) The Contractor shall accumulate the reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $400,000 in any year in which the fund balance is less than $4,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for such purposes as those identified in Subarticle 10.3(a)(iv) hereof. Such annual deposits and the accumulation of interest and dividends to the reserve fund shall continue until $4,000,000 is accumulated. Interest and dividends accruing to fund balances shall be added to the fund in any year when the fund balance is greater than $4,000,000; Provided, That in no event shall the fund be increased to an amount greater than the actual amount of fixed OM&R costs for the preceding year as mutually determined by the Contractor and the Contracting Officer. Any balance in the fund in excess of the amount of fixed OM&R costs for the previous year shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted in consideration of the risk and uncertainty stemming from the size and complexity of the project, the size of the annual OM&R budget, additions to, deletions from, or changes in project works, or OM&R costs not

contemplated when this contract was executed.

(iv) The Contractor may make expenditures from such reserve fund only for meeting unforeseen and extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs (in situations where recurrence of severe operation and maintenance problems can be avoided or eliminated). Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) During any period in which any of the project works are operated and maintained by the United States, the reserve fund shall be available for like use by the United States.

(vi) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement indicating the principal and accumulated interest in the emergency OM&R reserve fund as of December 31 of the preceding year.

(b) (i) No later than 1 year following the Contractor's last construction advance under the Plan 6 Funding Agreement, the Contractor shall accumulate and maintain a repayment reserve fund to help assure payments to the United States under this contract.

(ii) The Contractor shall accumulate such reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $4,000,000 in any year in which the fund balance is less than $40,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for the

purpose for which it was established. Such annual deposits and the accumulation of interest to the reserve fund shall continue until $40,000,000 is accumulated. Any balance in the fund in excess of $40,000,000 shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted.

(iv) Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement of the principal and accumulated interest in the repayment reserve fund as of December 31 of the preceding year.

10.4 Recreational Use of Water Facilities.

(a) The enhancement of recreational opportunities in connection with the project works authorized pursuant to Title III of the Basin Project Act shall be in accordance with the provisions of the Federal Water Project Recreation Act, 79 Stat. 213, dated July 9, 1965, except as provided in Subarticle 10.4(b) hereof.

(b) Recreational development at Orme Dam and Reservoir shall be governed by the provisions of Section 302(d) of the Basin Project Act.

10.5 Confirmation of Contract.

(a) The Contractor, after the execution of this contract,

shall promptly seek to secure a decree of a court of competent jurisdiction of the State of Arizona confirming the execution of this contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor. This contract shall not be binding on the United States or the Contractor until such final decree has been entered.

(b) This contract shall be indivisible for purposes of validation and shall not be binding on the United States or the Contractor unless validated pursuant to the provisions of Subarticle 10.5(a) hereof in each and all of its terms and conditions.

10.6 Rules, Regulations, and Determinations.

(a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Reclamation Law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation Law.

(b) The Contracting Officer, after an opportunity has been offered to the Contractor for consultation, shall have the right to make rules, regulations, and determinations consistent with the provisions of this contract, the laws of the United States and the State of Arizona, including, without limitation, rules, regulations, and determinations relative to maximizing project benefits from pumping from Lake Havasu, the rate and schedule of pumping therefrom and the rate and schedule of pumping at the Granite Reef pumping plants, to add to or modify said rules, regulations, and determinations as may be deemed proper and necessary to

carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The Contractor and each subcontractor shall observe such rules, regulations, and determinations and each subcontract shall so provide.

(c) Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor and shall be conclusive upon the parties.

10.7 Books, Records, and Reports. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: the Contractor's financial transactions, water supply data, project operation, maintenance and replacement logs, project land and right-of-way use agreements, and other matters specifically relating to this contract that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

10.8 Notices. Any notice, demand, or request authorized or

required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States, when mailed, postage prepaid, or delivered to the General Manager of the Contractor, 23636 North 7th Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

10.9 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

10.10 Changes in Contractor's Organization. While this contract is in effect, no change shall be made in the Contractor's organization, by exclusion of lands, by dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written consent; Provided, however, That approval is hereby given to the inclusion of other counties as part of Contractor's service area, except, however, that the United States shall not be required, under this contract, to construct project facilities to serve lands within said additional counties.

10.11 Assignment Limited--Successors and Assigns Obligated. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this

contract or any part or interest therein shall be valid until approved in writing by the Contracting Officer.

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

10.13 Equal Opportunity. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment

without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Contracting Officer, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

10.14 Compliance With Civil Rights Laws and Regulations.

(a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures

necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

10.15 Officials Not to Benefit. No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

11. STATUS OF DECEMBER 15, 1972 CONTRACT

Upon judicial confirmation of this contract, the December 15, 1972 contract entitled "Contract Between the United States and the Central Arizona Water Conservation District For Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), shall be superseded and replaced by this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
Assistant Secretary-Water and Science
Department of the Interior

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

ATTEST:

_____
Secretary

By _____
President

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 1 SUBALLOCATION OF CONTRACTOR'S WATER SUPPLY COSTS TO CONSTRUCTION STAGES:

Construction Stage	Allocable Cost ($M)	Percentage	Water Supply Cost ($M)
Water Supply System	1,500	71%	1,280
New Waddell	300	14%	256
Cliff Alternative	100	5%	85
Tucson Term. Storage	60	3%	51
Hooker Alternative	50	2%	43
Buttes	100	5%	85
Total	2,110	100%	1,800

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 2 SUBALLOCATION OF WATER SUPPLY COST:

Construction Stage	Allocable Cost ($M) Construction	IDC	Water Distribution (%) Irrigation	M&I
Water Supply System	1,280	200	58%	42%
New Waddell	256	40	54%	46%
Cliff Alternative	85	10	54%	46%
Tucson Term. Storage	51	10	53%	47%
Hooker Alternative	43	10	50%	50%
Buttes	85	10	50%	50%
Total	1,800	280	100%	

	Construction Cost Distribution ($M) Irrigation	M&I	IDC Cost Distribution ($M) Irrigation	M&I
Water Supply System	742	538	116	84
New Waddell	138	118	22	18
Cliff Alternative	46	39	5	5
Tucson Term. Storage	27	24	5	5
Hooker Alternative	21	21	5	5
Buttes	43	43	5	5
Total	1,017	783	158	122

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 3 DETERMINATION OF TOTAL WATER SUPPLY COST:

	Total Cost Distribution ($M)		
	Irrigation	M&I	Total
Water Supply System	742	622	1,364
New Waddell	138	136	274
Cliff Alternative	46	44	90
Tucson Term. Storage	27	29	56
Hooker Alternative	21	26	47
Buttes	43	48	91
Total	1,017	905	1,922

Irrigation = Irrigation construction cost
M&I = M&I construction cost + M&I IDC

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 4 ADJUSTMENTS TO ALLOCATED COST:

	Irrigation Cost ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)	M&I ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)
Water Supply System	742	-4		33	622	10		32
New Waddell	138		-45		136		-135	
Cliff Alternative	46				44		-30	
Tucson Term. Storage	27				29			
Hooker Alternative	21				26			
Buttes	43				48			
Total	1,017	-4	-45	33	905	10	-165	32

	Power Cost ($M)	Interim Operations ($M)	Total ($M)
Water Supply System	328	-100	1,663
New Waddell	61		155
Cliff Alternative	20		80
Tucson Term. Storage	12		68
Hooker Alternative	9		56
Buttes	19		110
Total	449	-100	2,132

EXHIBIT "B"

CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD) REPAYMENT CEILING (Billions of Dollars)

		Remaining Potential Stages			
	Water Supply System, New Waddell, and modified Roosevelt Dams	Tucson Terminal Storage	Cliff Dam Alternative	Hooker Dam Alternative	Buttes Dam	Total
Amount allocable to CAWCD repayment ceiling based on October 1988 prices.	$1.681	$.058	$.060	$.035	$.100	$.253
Inflation (4%) on features remaining to be completed, plus an amount for unforeseen contingencies (.82 of the inflation component)[1]	.100	.032	.035	.047	.133	$.247
Additional costs which could be allocated to CAWCD if the Gila River Indian Community does not take CAP water	.259	----	----	----	----	----
	----	----	----	----	----	----
Total	$2.040	$.090	$.095	$.082	$.233	$.500
Rounded	$2.000					$.500

[1] Inflation calculations based on the assumption that Tucson terminal storage and the Cliff Dam alternative are completed in 1995, and that the Hooker Dam alternative and Buttes Dam are completed in 2002.

Exhibit "B"

Assignment among RWCD, CAWCD and The United States
(See Exhibit "12.3." to Agreement)

EXHIBIT "12.3"

RWCD ASSIGNMENT TO CITIES

ASSIGNMENT

THIS AGREEMENT, dated as of February 12, 1988, is made and entered into by and among the United States of America acting through the Secretary of the Interior, the Central Arizona Water Conservation District, the Roosevelt Water Conservation District, the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa and Phoenix, and the Arizona Town of Gilbert.

R E C I T A L S

A. The United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members.

B. The foregoing settlement agreement requires the assignment by the Roosevelt Water Conservation District to the Cities and Town participating in the settlement of a portion of the agricultural water supply available to Roosevelt Water Conservation District from the Central Arizona Project.

C. The settlement agreement further requires the Secretary of the Interior, in certain events, to make available to the Cities and Town participating in the settlement a portion of the

agricultural water supply otherwise available from the Central Arizona Project.

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix and the Town of Gilbert.

(b) "City" shall mean any one of the Cities.

(c) "Contractor" shall mean the Central Arizona Water Conservation District.

(d) "Repayment Contract" shall mean the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 15, 1972 (Contract No. 14-06-W-245), and any amendment or revision thereof.

(e) "Secretary" and "Contracting Officer" shall mean the Secretary of the Interior or his duly authorized representative.

(f) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America; the Salt River Pima-Maricopa Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District.

(g) "Subcontract" shall mean the Subcontract among the United States, the Central Arizona Water Conservation District, and the Roosevelt Water Conservation District, Providing for Water Service, Central Arizona Project, dated [to be supplied] (Contract No. [to be supplied]).

(h) "Subcontractor" shall mean the Roosevelt Water Conservation District.

All other terms used in this Agreement which are defined in the Repayment Contract or the Subcontract shall have the meanings ascribed to them in the Repayment Contract and the Subcontract.

2. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, and for each Year thereafter until the term of the Subcontract expires, Subcontractor hereby assigns to the Cities an amount of Project Water, to be taken from Subcontractor's annual entitlement to Agricultural Water under Article 4.13 of the Subcontract, equal to the lesser of (a) 5,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, or (b) such amount of Project Water as is available from Subcontractor's annual entitlement to Agricultural Water after first providing for delivery to the Subcontractor, at the Subcontractor's Project turnout, of 8,000 acre-feet of Agricultural Water.

3. (a) If and when, as a result of a reduction in the acreage of eligible lands in Subcontractor's service area,

Subcontractor's entitlement to Agricultural Water under Article 4.13 of its Subcontract is insufficient to provide for the delivery to the Cities at the Cities' Project turnouts of a total amount of 3,000 acre-feet of Project Water (after first providing for the delivery of Subcontractor's entitlement to Agricultural Water as determined in accordance with subparagraph (b) of this Paragraph) in a Year in which the total supply of Agricultural Water available for delivery from the Project is 450,000 acre-feet or more, the Secretary shall thereafter make available for delivery to the Cities from the total supply of Agricultural Water otherwise available for delivery from the Project in each Year an amount of Project Water equal to the difference between (i) 3,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, and (ii) the amount of Project Water available to the Cities as a result of the assignment made in Paragraph 2 of this Agreement.

(b) If and when the provisions of subparagraph (a) of this Paragraph are implemented, Subcontractor's entitlement (i) to 8,000 acre-feet of Agricultural Water under subparagraph (b) of Paragraph 2 of this Agreement or (ii) to such lesser amount of Agricultural Water as may be determined in conformance with the provisions contained in subparagraph (d) of Paragraph 12 of this Agreement shall be subject to reduction in an amount equal to Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract multiplied by the amount of Agricultural Water made available by the Secretary for delivery to the Cities pursuant to subparagraph (a) of this Paragraph.

(c) Attached hereto as Appendix A are examples of how Paragraphs 2 and 3 of this Agreement are intended to operate under various conditions.

4. (a) Project Water made available to the Cities pursuant to Paragraph 2 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	972 acre-feet per Year;
City of Glendale	=	682 acre-feet per Year;
City of Scottsdale	=	23 acre-feet per Year;
City of Tempe	=	23 acre-feet per Year;
City of Mesa	=	627 acre-feet per Year;
City of Phoenix	=	1,136 acre-feet per Year;
Town of Gilbert	=	1,537 acre-feet per Year;
TOTAL	=	5,000 acre-feet per Year.

(b) Project Water made available to the Cities pursuant to Paragraph 3 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	583 acre-feet per Year;
City of Glendale	=	409 acre-feet per Year;
City of Scottsdale	=	14 acre-feet per Year;
City of Tempe	=	14 acre-feet per Year;
City of Mesa	=	376 acre-feet per Year;
City of Phoenix	=	682 acre-feet per Year;
Town of Gilbert	=	922 acre-feet per Year;
TOTAL	=	3,000 acre-feet per Year.

(c) Prior to the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted by mutual agreement of such Cities. On and after the enforceability date of the Settlement Agreement, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted only by mutual agreement of such Cities, the Contractor, and the United States.

(d) In the event this Agreement shall become effective and any City ("designating City") entitled to receive water hereunder is unable to take delivery of such water by virtue of not having constructed a treatment plant capable of taking deliveries of water from the Central Arizona Project, the designating City shall in writing designate one or more Cities which are also parties to this Agreement to act as the interim recipients ("interim recipient") of the designating City's water, and water made available to the designating City under this Agreement shall be delivered by Contractor to the interim recipient(s) until such time as the designating City's treatment plant is completed and ready to take delivery of and treat deliveries of water from the Central Arizona Project. The designating City shall notify Contractor and Subcontractor of any such designation and shall also provide Contractor and Subcontractor with copies of any agreement between the designating City and the interim recipient(s). Any

such agreement shall not be inconsistent with any provisions of the Repayment Contract, the Subcontract, or this Agreement.

5. Notwithstanding anything in the Repayment Contract or the Subcontract to the contrary, Project Water made available to the Cities pursuant to this Agreement may be used for any M&I Water uses including but not limited to ground water recharge.

6. Notwithstanding any schedule or other instruction to the contrary, Project Water made available to the Cities pursuant to this Agreement, including any water delivered under a designation agreement entered into pursuant to Paragraph 4(d) hereof, shall be accounted for and treated by the Contractor and the Contracting Officer as having been scheduled for delivery by the Cities, and delivered to the Cities, prior to the delivery of any portion of the Cities' entitlements to Project M&I Water under the Cities' M&I Water service subcontracts (City of Chandler, Contract No. 5-07-30-W0070; City of Glendale, Contract No. 5-07-30-W0062; City of Scottsdale, Contract No. 5-07-30-W0063; City of Tempe, Contract No. 5-07-30-W0061; City of Mesa, Contract No. 5-07-30-W0060; City of Phoenix, Contract No. 5-07-30-W0059; Town of Gilbert, Contract No. [to be supplied]), prior to the delivery of any portion of the Cities' entitlements to under the Cities' Project Water Lease Agreements (Exhibits "3.m.1" through "3.m.7" of the Settlement Agreement), and prior to the delivery of any portion of the Cities' entitlements to "Colorado River water" under and as defined in the Cities' River Water Exchange Contracts (Exhibits "3.h.1" through "3.h.7" of the Settlement Agreement).

7. Except as otherwise provided in Paragraph 11 hereof, the Cities shall make payment for Project Water made available to the Cities pursuant to this Agreement in accordance with the terms and conditions of contracts to be entered into among the United States, the Contractor, and each of the Cities, the forms of which are attached as Exhibits "3.h.1" through "3.h.7" to the Settlement Agreement.

8. Except as provided in Paragraph 10 of this Agreement, nothing in this Agreement shall relieve the Subcontractor of its obligation to make the payments required in the Subcontract.

9. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract, the costs associated with the delivery of Project Water to the Cities pursuant to this Agreement shall be nonreimbursable, and such costs shall be excluded from the Contractor's repayment obligation.

10. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the Subcontractor's obligation to pay Agricultural Water service capital charges pursuant to Subarticle 5.2(a) of the Subcontract shall be reduced in each Year by an amount equal to $2.00 per acre-foot, or such amount as may be determined by the Contracting Officer based on payment capacity determinations provided for in the Repayment Contract, multiplied by the total amount of Project Water assigned by the Subcontractor

to the Cities pursuant to Paragraph 2 of this Agreement and scheduled for delivery by the Cities in such Year.

11. (a) Each City agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any operation, maintenance, and replacement costs associated with Project Water made available for delivery to the City pursuant to Paragraph 2 of this Agreement. Each City further agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any Agricultural Water service capital charges associated with any Project Water assigned by the Subcontractor to the City pursuant to Paragraph 2 of this Agreement. The liability of each City under this Paragraph 11(a) shall be its sole and separate obligation, and shall not be an obligation joint and several with any other City or Cities.

(b) In the event any City shall default and fail to indemnify Contractor or Subcontractor as required in Paragraph 11(a) hereof, then such City's entitlement to water under this Agreement shall be forfeit and such entitlement shall be redistributed pro rata to each of the other Cities which are parties to this Agreement. The redistribution of water shall be effected by means of a notice from Subcontractor and Contractor, if either has not been indemnified, to the defaulting City and to the other Cities which are parties to this Agreement, and such redistribution shall be effective on the thirty-fifth day after the notice is given. Within ten days of receiving the notice of re-distribution, each City other than the defaulting City shall pay to

Subcontractor or Contractor, as the case may be, its share of the amount the defaulting City shall have failed to pay, which share shall be in the proportion which the amount of water redistributed to such City bears to the total amount of water redistributed. In the event any City to which water is redistributed shall fail to make the payment hereby required to be made within the time herein prescribed, Subcontractor or Contractor, as the case may be, shall be free to redistribute such City's entitlement to redistributed water to any other City which makes such payment and which is also a party to this Agreement.

12. (a) Subcontractor's entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be 5.98 percent of the total supply of Agricultural Water available for delivery from the Project (subject to reduction by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer) unless, prior to the issuance by the Secretary of Notice of Completion of the Water Supply System, Subcontractor notifies the Contractor and the Contracting Office that it wishes to reduce its entitlement to a lesser percentage of the total Agricultural Water supply. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement under Subarticle 4.13(a) of the Subcontract shall be as stated in the notice from the Subcontractor to the Contractor and the Contracting Officer.

(b) Notwithstanding the foregoing, the Contractor and the Contracting Officer may at any time prior to the issuance of

such Notice of Completion require the Subcontractor to specify its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract by notifying the Subcontractor that it must specify such entitlement within six months of the date that the Contractor and the Contracting Officer issue such notice. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be as specified by the Subcontractor in response to the notice issued by the Contractor and the Contracting Officer. In the event the Subcontractor fails to make such specification within the time required, Subcontractor's entitlement shall be fixed at 5.98 percent of the total Agricultural Water supply (subject to adjustment by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer).

(c) At the time the Subcontractor notifies the Contractor and the Contracting Officer of its percentage entitlement pursuant to subparagraph (a) of this Paragraph, or at the time the Subcontractor specifies its entitlement pursuant to subparagraph (b) of this Paragraph, Subcontractor may relinquish:

(i) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(a) of the Subcontract to be made available to the Subcontractor as a result of deductions made in other subcontractors' entitlements to Agricultural Water to reflect removal of eligible lands from agricultural use; and

(ii) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(b) of the Subcontract to be made available to the Subcontractor as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available;

Provided, however, that the Subcontractor shall relinquish at least 5,000 acre-feet, or the percentage of the projected Agricultural Water supply that most closely approximates 5,000 acre-feet, of any additional Agricultural Water entitlement to which the Subcontractor would be entitled under Subarticle 4.13(b) of the Subcontract as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available.

(d) Subject to the requirements and limitations of this Paragraph 12, Subcontractor may select its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract based upon its own evaluation of potential Agricultural Water supplies and its own requirements; Provided, however, that said Subcontractor's entitlement to Agricultural Water shall in no event exceed the lesser of 5.98 percent or the percentage entitlement determined by dividing the number of acres of eligible lands in the Subcontractor's service area by the total number of acres of eligible lands in the service areas of all subcontractors of Agricultural Water, as determined by the Contracting Officer.

13. Except as provided in this Agreement, all terms and conditions of the Subcontract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

Attest:

_____
Secretary

CENTRAL ARIZONA WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: George W. Barr
Title: President

Attest:

_____
Secretary

ROOSEVELT WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: Mark W. Dobson
Title: President

Attest:

_____
Clerk

Approved as to Form:

_____
City Attorney

CITY OF PHOENIX, a Municipal corporation, MARVIN A. ANDREWS, City Manager

By _____

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF SCOTTSDALE, an Arizona municipal corporation

By
Name: Herbert R. Drinkwater
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF GLENDALE, an Arizona municipal corporation

By
Name: George R. Renner
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF MESA, an Arizona municipal corporation

By
Name:
Title:

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF TEMPE, an Arizona municipal corporation

By
Name: Harry E. Mitchell
Title: Mayor

. . .

Attest:

Clerk, Acting

Approved as to Form:

City Attorney

CITY OF CHANDLER, an Arizona municipal corporation

By

Name: Richard Dugan
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

TOWN OF GILBERT, an Arizona municipal corporation

By

Name: Steve M. Berman
Title: Mayor

. . .

APPENDIX A

The following are five examples of how Paragraphs 2 and 3 of the Assignment are intended to operate under varying water supply conditions and assuming varying entitlements to CAP Agricultural Water for Roosevelt Water Conservation District ("RWCD") under Subarticle 4.13(a) of RWCD's CAP Agricultural Subcontract.

EXAMPLE 1

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 1,000,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 5.98%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 59,800 AF.

(5.98% X 1,000,000 AF - 59,800 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 59,800 AF - 8,000 AF = 51,800 AF

5. RWCD's balance = 54,800 AF.

EXAMPLE 2

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 13,005 AF.

(2.89% X 450,000 AF = 13,005 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 13,005 AF - 8,000 AF = 5,005 AF.

5. RWCD's balance = 8,005 AF.

EXAMPLE 3

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,890 AF.

(2.89% X 100,000 AF = 2,890 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment = 0 (because RWCD's entitlement is sufficient to provide for delivery to the Cities of at least 3,000 AF in any year in which the total supply is 450,000 AF or more -- See Example 2).

EXAMPLE 4

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 10,980 AF.

(2.44% X 450,000 AF - 10,980 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

   (a) 5,000 AF, or

   (b) 10,980 AF - 8,000 AF = 2,980 AF.

5. Cities' entitlement under Paragraph 3 of the Assignment =

   (a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area:

   Cities' entitlement = 3,000 AF - 2,980 AF = 20 AF

   CITIES' TOTAL = 3,000 AF

   (b) IF 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0

   CITIES' TOTAL = 2,980 AF

EXAMPLE 5

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,440 AF.

(2.44% X 100,000 AF = 2,440 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment:

(a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement = 3,000 AF.

(b) RWCD's contribution = 2.44% X 3,000 AF = 73 AF.

(c) RWCD's net entitlement = 2,440 AF - 73 AF = 2,367 AF.

BUT

(d) If 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0.

Exhibit "C"

Total CAP Water Available to M&I:	443,067	A
SRPMIC Agreement Water Calculations		
• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	2,088	
Total Agreement Water Credit:	19,912	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	462,979	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	69.64%	

CAP Water Available to M&I: 443,067 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	Delivery Without Agreement (AF)	Delivery With Agreement* (AF)
Avondale	4,099	0.64%	0.00%	0	2,833	2,855
Peoria	17,849	2.79%	0.00%	0	12,338	12,430
Glendale	14,083	2.20%	13.64%	3,545	9,735	12,276
Phoenix	113,882	17.83%	22.73%	5,909	78,721	83,422
Scottsdale	19,702	3.08%	0.45%	118	13,619	13,803
Chaparral City	6,978	1.09%	0.00%	0	4,824	4,859
Prescott	7,127	1.12%	0.00%	0	4,927	4,963
Payson	4,995	0.78%	0.00%	0	3,453	3,478
Tempe	4,315	0.68%	0.45%	118	2,983	3,087
Mesa	29,527	4.62%	12.55%	3,262	20,411	22,834
Apache Jct	6,000	0.94%	0.00%	0	4,147	4,178
Chandler	3,668	0.57%	19.45%	5,056	2,536	6,075
Gilbert	7,235	1.13%	30.74%	7,991	5,001	10,604
Casa Grande	8,884	1.39%	0.00%	0	6,141	6,187
Tucson	148,420	23.23%	0.00%	0	102,595	103,359
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

Total CAP Water Available to M&I:	218,338	A
SRPMIC Agreement Water Calculations		
• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	3,496	
Total Agreement Water Credit:	18,504	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	236,842	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	35.62%	

CAP Water Available to M&I: 218,338 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	**Delivery Without Agreement (AF)**	**Delivery With Agreement* (AF)**
Avondale	4,099	0.64%	0.00%	0	**1,385**	**1,460**
Peoria	17,849	2.79%	0.00%	0	**6,031**	**6,359**
Glendale	14,083	2.20%	13.64%	3,545	**4,759**	**6,280**
Phoenix	113,882	17.83%	22.73%	5,909	**38,481**	**42,675**
Scottsdale	19,702	3.08%	0.45%	118	**6,657**	**7,061**
Chaparral City	6,978	1.09%	0.00%	0	**2,358**	**2,486**
Prescott	7,127	1.12%	0.00%	0	**2,408**	**2,539**
Payson	4,995	0.78%	0.00%	0	**1,688**	**1,779**
Tempe	4,315	0.68%	0.45%	118	**1,458**	**1,579**
Mesa	29,527	4.62%	12.55%	3,262	**9,977**	**11,681**
Apache Jct	6,000	0.94%	0.00%	0	**2,027**	**2,137**
Chandler	3,668	0.57%	19.45%	5,056	**1,239**	**3,108**
Gilbert	7,235	1.13%	30.74%	7,991	**2,445**	**5,424**
Casa Grande	8,884	1.39%	0.00%	0	**3,002**	**3,165**
Tucson	148,420	23.23%	0.00%	0	**50,151**	**52,874**
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

EXHIBIT "3.h.6."

River Water Exchange Contract
City of Phoenix, Arizona

Exhibit "3.h.6"
RIVER WATER EXCHANGE CONTRACT
City of Phoenix, Arizona

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Exhibit "3.h.6"
RIVER WATER EXCHANGE CONTRACT
City of Phoenix, Arizona

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Exhibits

Exhibit "A" CAP Master Repayment Contract

Exhibit "B" Assignment among RWCD, CAWCD and the United States

Exhibit "C" SRPMIC Agreement Water Calculations (Tables 1 and 2)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE CITY OF PHOENIX, ARIZONA
PROVIDING FOR WATER SERVICE

ARTICLE 1
Preamble

1. THIS CONTRACT, made as of the 12th day of February, 1988, in pursuance of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549, and 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), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, hereinafter referred to collectively as the "Federal Reclamation Laws," and the various authorities and responsibilities of the Secretary of the Interior in relation to Indians and Indian Tribes, as contained in Title 25 U.S.C. and 43 U.S.C. § 1457, among THE UNITED STATES OF AMERICA, acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as "CAWCD," a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the CITY OF PHOENIX, Arizona, hereinafter referred to as the "City," with its principal place of business at 251 West Washington, Phoenix, Arizona;

WITNESSETH, THAT:

ARTICLE 2
Explanatory Recitals

2. 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., CAWCD 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 CAWCD, shall be a party to contracts that are in conformity with and subsidiary to the master contract; and

WHEREAS, the United States and CAWCD entered into Contract No. 14-06-W-245 dated December 15, 1972, which was amended on

December 1, 1988, hereinafter referred to as the "Repayment Contract," a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, whereby CAWCD agrees to repay to the United States the reimbursable costs of the Central Arizona Project allocated to CAWCD; and

WHEREAS, the City has entered into a water service subcontract with the United States and CAWCD for municipal and industrial water service from water supplies available from the Central Arizona Project, Contract No. 5-07-30-W0059; and

WHEREAS, the United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert, Arizona, and CAWCD have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members, to finally resolve pending litigation on water rights and damage claims, and to seek funding for implementation of the settlement; and

WHEREAS, the United States, acting through the Secretary of the Interior, has both a trust and fiduciary responsibility to make the Salt River Pima-Maricopa Indian reservation a permanent Tribal homeland for the Salt River Pima-Maricopa Indian Community; and

. . .

WHEREAS, as part of the water rights settlement with the Salt River Pima-Maricopa Indian Community, the United States is required to contract with the City for the delivery through Central Arizona Project facilities of not to exceed five thousand (5,000) acre-feet per year of Colorado River water which was not included in the determination of water supplies available to the Central Arizona Project, plus certain additional amounts of Central Arizona Project water to be made available each year by the Roosevelt Water Conservation District or the Secretary of the Interior from Central Arizona Project water supplies otherwise available for agricultural use;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 3
Definitions

3. For purposes of this Contract:

(a) "Agricultural water" shall mean water made available from the Central Arizona Project for the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than five acres.

(b) "CAWCD's service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such other counties as may hereafter become part of the District, . . .

exclusive of any Indian reservation land lying wholly or partly within said Counties.

(c) "Central Arizona Project" or "CAP" or "project" shall mean the project and works authorized by Section 301(a) of the Colorado River Basin Project Act and constructed by the United States pursuant to the provisions of said Act.

(d) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix, and the Town of Gilbert.

(e) "Colorado River water" shall mean that Colorado River mainstream water to be delivered to the City under this Contract which has a Colorado River priority pre-dating September 30, 1968.

(f) "Contracting Officer" shall mean the Secretary or his authorized designee acting on his behalf.

(g) "Distribution works" shall mean those facilities constructed or used for the purpose of distributing water to or within the City's service area after said water has been transported through the water supply system to the City's project turnout(s).

(h) "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be amended or revised.

. . .

(i) "Miscellaneous water" shall mean water made available from the Central Arizona Project, or by exchange for such water, for recreational and fish and wildlife purposes at other than project facilities, and which has a lesser priority of use than agricultural water.

(j) "Municipal and industrial water," hereinafter sometimes referred to as "M&I water," shall mean water made available from the Central Arizona Project other than agricultural water and miscellaneous water.

(k) "Notice of completion" shall mean the notice which the Contracting Officer issues to CAWCD to announce the substantial completion of the water supply system, or of those features of the project which include or comprise the water supply system, or of the entire project if constructed concurrently, thereby initiating payments therefor allocated to CAWCD.

(l) "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

(m) "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

(n) "Assignment Water" shall mean that water to be delivered to the City under this Contract which is made available to the City by the Roosevelt Water Conservation District ("RWCD") or the Secretary of the Interior pursuant to the Assignment, dated as of February 12, 1988, among the United States, CAWCD, RWCD, . . .

and the Cities. A copy of the Assignment is attached hereto as Exhibit "B" and by this reference made a part hereof.

(o) "Project works" shall mean the principal works described in Section 301(a) of the Colorado River Basin Project Act, and appurtenances thereto, or as modified pursuant to the Repayment Contract, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

(p) "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from Colorado River water or Assignment Water as defined herein, but shall not include any water delivered through the project works for ground water recharge purposes.

(q) "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

(r) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, RWCD, the Roosevelt Irrigation District, the Cities, and CAWCD.

(s) "Subcontractor" shall mean any irrigation district, municipality, individual, or any other entity which enters into a water service subcontract with the United States and CAWCD in furtherance of the provisions of the Colorado River Basin Project Act.

(t) "Time of shortage" shall mean a calendar year for which the Secretary determines that a shortage exists pursuant to Section 301(b) of the Colorado River Basin Project Act, such that there is not sufficient water available for delivery from the Central Arizona Project in that year (after reduction in consideration of anticipated losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein) to meet fully the entitlements of Indian contractors and non-Indian municipal and industrial subcontractors of Central Arizona Project water supplies.

(u) "Transferred works" shall mean such features of the project or such facilities of the water supply system as to which OM&R responsibility is transferred from the United States to the Operating Agency.

(v) "Water supply system" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila, and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

(w) "Year" shall mean the period between January 1 through the next succeeding December 31.

ARTICLE 4
Term

4. This Contract shall become effective upon its execution by the parties hereto and its term shall be perpetual.

ARTICLE 5
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 5,000 acre-feet; and

(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 1,136 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 682 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery

point on the Colorado River, and shall be subject to reduction on account of losses by reason of evaporation and seepage occurring during the transportation of such water through the water supply system to the City's project delivery point. Said losses occurring on the City's Colorado River water supplies shall be determined by the Contracting Officer or the Operating Agency, but shall not exceed the City's pro rata share of losses as compared to losses due to evaporation and seepage occurring during transportation through the water supply system of all water supplies delivered during a year.

(d) The City's entitlement to Assignment Water under Subparagraphs 5(b)(ii) and 5(b)(iii) hereof, and its rights and obligations with respect to such Assignment Water, shall be subject to the terms and conditions of the Assignment attached hereto as Exhibit "B".

(e) The City's entitlement to Colorado River water and Assignment Water under this Contract shall be in addition to the City's entitlement to Central Arizona Project water for municipal and industrial use under the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0059).

(f) During such periods as it operates and maintains the Central Arizona Project, the United States shall deliver Colorado River water and Assignment Water to which the City is entitled under this Contract through the water supply system. Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the United States shall use all reasonable diligence to make available

to the City the quantity of Colorado River water and Assignment Water specified in the schedule submitted by the City in accordance with Article 6 hereof. After transfer of OM&R responsibility to the Operating Agency, the United States shall make deliveries of Colorado River water and Assignment Water to the Operating Agency which shall make subsequent delivery of such water to the City as provided herein.

(g) The obligation of the United States and the Operating Agency to deliver Colorado River water and Assignment Water to the City under this Contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, the contract between the United States and the State of Arizona dated February 9, 1944, the Opinion of the Supreme Court of the United States in the case of Arizona v. California et al., rendered June 3, 1963, 373 U.S. 546, and the Decree of that court in said case, entered March 9, 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as hereafter modified;

(ii) Executive A, Seventy-Eighth Congress, Second Session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and

Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty, all hereinafter referred to as the Mexican Water Treaty;

(iii) The express understanding and agreement by the City that this Contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this Contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and City shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam, Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to City hereunder; and

(iv) The right of the United States or the Operating Agency temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works

whatsoever affecting, utilized or, in the opinion of the Secretary or the Operating Agency, necessary for delivery of water hereunder, it being understood that so far as feasible the United States or the Operating Agency will (i) do so during periods of low water demands and (ii) give reasonable notice in advance of such temporary discontinuance or reduction.

(h) Subject to the terms and conditions herein, the United States and the Operating Agency shall be obligated to deliver Colorado River water and Assignment Water to the City without regard as to whether or not the Salt River Pima-Maricopa Indian Community exercises its right to use any or all of the exchange water referred to in Paragraph 12 of the Settlement Agreement.

(i) Delivery and use of Colorado River water and Assignment Water under this Contract is further conditioned on the following, and the City hereby agrees that:

(i) All uses of Colorado River water, Assignment Water and return flow shall be consistent with Arizona water law unless such law is inconsistent with the Congressional directives applicable to the Central Arizona Project.

(ii) The system or systems through which Colorado River water and Assignment Water for municipal and industrial (including ground water recharge) purposes is conveyed after delivery to the City shall consist of pipelines, canals, distribution systems, or other conduits provided and maintained with linings adequate in the Contracting Officer's judgment to prevent excessive conveyance losses.

(iii) The City shall not pump, or within its legal authority, permit others to pump ground water from within the exterior boundaries of the City's service area, which has been delineated on a map filed with the Contractor and approved by the Contractor and the Contracting Officer, for use outside of said service area unless such pumping is permitted under Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time, and the Contracting Officer, CAWCD, and the City shall agree, or shall have previously agreed, that a surplus of ground water exists and drainage is or was required; Provided, however, That such pumping may be approved by the Contracting Officer and CAWCD, and approval shall not be unreasonably withheld, if such pumping is in accord with the Colorado River Basin Project Act and upon submittal by the City of a written certification from the Arizona Department of Water Resources or its successor agency that the pumping and transportation of ground water is in accord with Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time.

(iv) The City shall not sell or otherwise dispose of or permit the sale or other disposition of Colorado River water and Assignment Water for use outside of Maricopa, Pinal, and Pima Counties; Provided, however, That this does not prohibit exchanges of Colorado River water and Assignment Water covered by separate agreements; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to

Article 6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0059).

(j) (i) Colorado River water and Assignment Water scheduled for delivery in any year under this contract may be used by the City or resold or exchanged by the City pursuant to appropriate agreements approved by the Contracting Officer and CAWCD. If said water is resold or exchanged by the Contractor for an amount in excess of that which the City is obligated to pay under this Contract, the excess amount shall be paid forthwith by the City to CAWCD for application against the CAWCD's repayment obligation to the United States; Provided, however, That the Contractor shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to OM&R costs.

(ii) Colorado River water and Assignment Water scheduled for delivery in any year under this Contract that cannot be used, resold, or exchanged by the City may be made available by the Contracting Officer or the Operating Agency to other users. If such water is sold to or exchanged with other users, the City shall be relieved of its payments hereunder only to the extent of the amount paid to the Contracting Officer and the Operating Agency by such other users, but not to exceed the amount the City is obligated to pay under this Contract for said water.

(iii) In the event the City, the Contracting Officer, or the Operating Agency is unable to sell any portion of the Colorado River water or Assignment Water scheduled for delivery by the City but not required by the City in any year, the City

shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water as determined by the Contracting Officer or the Operating Agency.

(k) The City shall have the right to use Colorado River water and Assignment Water received under this Contract for any purpose consistent with Arizona law, including ground water recharge.

ARTICLE 6
Procedure for Ordering Water

6. At least six months prior to the delivery of Colorado River water and Assignment Water to the City under this Contract, the Contracting Officer or the Operating Agency shall issue a written notice of availability of such water to the City. The City will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer and the Operating Agency showing the quantities of (i) Colorado River water and (ii) Assignment Water requested for delivery. The City shall submit a schedule which requests the delivery of all Assignment Water available to it. If the first notice of availability of water is issued to the City by the Contracting Officer or the Operating Agency prior to June 1 of any year, the first schedule for the balance of said year shall be submitted to the Contracting Officer and the Operating Agency within 30 days after the City's receipt of such notice. If such notice is issued after June 1 of any year, the first schedule shall be submitted to the Contracting Officer and the Operating Agency within 30 days after the City's

receipt of such notice and shall cover the balance of such year and the next succeeding year. Thereafter, the amounts, times, and rates of delivery of water to the City during any year shall be in accordance with a water delivery schedule for that year, such schedule to be determined in the following manner:

(a) On or before June 1 of each year, the Contracting Officer shall announce (i) the amount of Colorado River water and (ii) the amount of Assignment Water available for delivery during the following year in a written notice to the Operating Agency and the City.

(b) On or before October 1 of each year, the City shall submit in writing to the Operating Agency and the Contracting Officer a water delivery schedule indicating the amounts of (i) Colorado River water and (ii) Assignment Water desired by the City during each month of the following year along with a preliminary schedule of water desired for the succeeding 2 years. The City shall schedule for delivery each year all Assignment Water available to it for delivery during that year.

(c) Upon receipt of such schedule, the Contracting Officer and the Operating Agency shall review it and, after consultation with the City, shall make only such modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to the City are consistent with the delivery capability of the project, considering, among other things, the availability of water and the delivery schedules of all subcontractors of Central Arizona Project water service; Provided, That

this provision shall not be construed to reduce annual deliveries to the City.

(d) On or before November 15 of each year, the Contracting Officer or the Operating Agency shall determine and furnish to the City the water delivery schedule for the next succeeding year which shall show the amounts of (i) Colorado River water and (ii) Assignment Water to be delivered to the City during each month of that year.

(e) The monthly water delivery schedules may be amended by the Contracting Officer or the Operating Agency upon the City's written request. Proposed amendments shall be submitted by the City within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer or the Operating Agency in like manner as the schedule itself.

(f) In no event shall the Contracting Officer or the Operating Agency be required to deliver in any one month (i) an amount of Colorado River water greater than eleven percent (11%) of the City's maximum annual entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment Water greater than eleven percent (11%) of the City's maximum annual entitlement to Assignment Water under Subarticle 5(b)(ii) or 5(b)(iii) of this Contract; Provided, however, That the Contracting Officer or the Operating Agency may deliver a greater percentage of such water in any month if such increased delivery is compatible with the overall delivery of Central Arizona Project water to CAP

subcontractors as determined by the Contracting Officer and the Operating Agency, and if the City agrees to accept such increased deliveries.

ARTICLE 7
Points of Delivery--Measurement and Responsibility for Distribution of Water

7. (a) All water to be furnished to the City pursuant to this Contract shall be delivered at turnouts to be constructed by the United States at such point(s) on the water supply system as may be agreed upon in writing by the Contracting Officer and CAWCD, after consultation with the City.

(b) Unless the United States and the City agree by contract to the contrary, the City shall construct and install, at its sole cost and expense, connection facilities required to take and convey such water from the turnouts to the City's service area. The City shall furnish, for approval of the Contracting Officer, drawings showing the construction to be performed by the Contractor within the water supply system right-of-way six months before starting said construction. The facilities may be installed, operated, and maintained on the water supply system right-of-way subject to such reasonable restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by the Contracting Officer.

(c) All water delivered to the City pursuant to this Contract shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or by the Operating Agency. Upon the request of the

City or the Operating Agency, the accuracy of such measurements shall be investigated by the Contracting Officer or by the Operating Agency and the City, and any errors which may be mutually determined to have occurred therein shall be adjusted; Provided, That in the event the parties cannot agree on the required adjustment, the Contracting Officer's determination shall be conclusive.

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

(e) In addition to the right of the United States under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce the amount of water to be delivered through the Central Arizona Project, the United States or the Operating Agency may, after consultation with the City, temporarily discontinue or reduce the quantity of water to be furnished to the City as herein provided for the purpose of investigation, inspection, maintenance, repair, or replacement of any CAP facilities or any part thereof necessary for the furnishing of water to the City under this Contract, but so far as feasible the United

States or the Operating Agency shall coordinate any such discontinuance or reduction with the City and shall give the City due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Neither the United States, its officers agents, and employees, nor the Operating Agency, its officers, agents, and employees, shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to the City of less water than what has been paid for in advance, the City shall be entitled to be reimbursed for the appropriate proportion of advance payments of OM&R charges prior to the date of the City's next payment of OM&R charges or the City may be given credit toward the next payment of OM&R charges if the City should so desire.

ARTICLE 8
Priority in Case of Shortage

8. (a) Subject to the provisions of Section 304(e) of the Colorado River Basin Project Act, in the event of a shortage of the water supplies available to the Central Arizona Project, as determined by the Contracting Officer after consultation with CAWCD, Assignment Water furnished to the City under this Contract shall be subject to reduction in the same manner and to the same extent as agricultural water under Central Arizona Project agricultural water service subcontracts.

. . .

(b) In a time of shortage, the City's entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract shall be determined by the following formula:

City's entitlement to Colorado River water in a time of shortage = $[(X+Y) \cdot (A+B)/(C+D)] - [(X/D) \cdot A]$*

X = the City's entitlement to Central Arizona Project water for M&I water use under Article 4.12 of Contract No. 5-07-30-W0059, as the same may be amended or supplemented from time to time;

Y = 5,909 acre-feet;

A = the total amount of water available from the Central Arizona Project for non-Indian M&I water use (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein), as determined by the Contracting Officer in accordance with the method outlined in the Record of Decision of the Secretary published in the Federal Register on March 24, 1983;

B = the total amount of Colorado River water available to the Cities pursuant to this Contract with the City of Phoenix and like contracts with the other Cities (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system);

C = 26,000 acre-feet.

D = the sum of all non-Indian municipal and industrial subcontractors' entitlements to Central Arizona Project water for M&I water use under Article 4.12 of all non-Indian CAP municipal and industrial subcontracts, as the same may be amended or supplemented from time to time;

* It is the intent of the parties that this calculation be performed in a manner which is consistent with the method of

calculation exemplified in Tables 1 and 2 attached hereto as Exhibit "C".

(c) Notwithstanding the provisions of Subarticle 5(c) of this Contract, the City's entitlement to Colorado River water, as determined in accordance with the formula set forth in Subarticle 8(b) hereof, shall be made available to the City at the City's project turnout(s).

(d) In a time of shortage, any Colorado River water available from the 22,000 acre-feet to be obtained by the United States pursuant to Subarticle 5(a) hereof in excess of that necessary to satisfy the entitlement of the City under Subarticle 8(b) of this Contract and the entitlements of the other Cities under Subarticle 8(b) of like contracts with such Cities shall be made available by the Secretary for delivery to non-Indian CAP municipal and industrial subcontractors other than the Cities pursuant to the Central Arizona Project M&I water service subcontracts with such subcontractors, pro rata in proportion to each such subcontractor's entitlement to Central Arizona Project water for M&I use under such subcontractor's Central Arizona Project M&I water service subcontract. The manner in which this Subarticle 8(d) is intended to operate is illustrated by Tables 1 and 2 attached hereto as Exhibit "C".

ARTICLE 9
Payments

9. (a) Subject to the provisions of Article 11 hereof, the City shall pay in advance for CAP OM&R costs estimated to be incurred by the United States or the Operating Agency in delivering

Colorado River water and Assignment Water to the City pursuant to this Contract. At least 6 months prior to the first delivery of such water, or as soon thereafter as is practicable, the Contracting Officer or the Operating Agency shall furnish the City with an estimate of the City's share of OM&R costs to the end of the initial year of water delivery and an estimate of such costs for the following year. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer or the Operating Agency, but prior to the delivery of water, the City shall advance to the Contracting Officer or the Operating Agency its share of such estimated costs to the end of the initial month of water delivery and without further notice or demand shall on or before the first day of each succeeding month of the initial year of water delivery and the following year advance to the Contracting Officer or the Operating Agency in equal monthly installments the City's share of such estimated costs. Advances of monthly payments for each subsequent year shall be made by the City to the Contracting Officer or the Operating Agency on the basis of annual estimates to be furnished by the Contracting Officer or the Operating Agency on or before June 1 preceding each said subsequent year, and the advances of payments for said estimated costs shall be due and payable in equal monthly payments on or before the first day of each month of the subsequent year. Differences between actual OM&R costs and estimated OM&R costs shall be adjusted in the next succeeding annual estimates; Provided, however, That if in the opinion of the Contracting Officer or the Operating Agency the

amount of any annual OM&R estimate is likely to be insufficient to cover the above-mentioned costs during such period, the Contracting Officer or the Operating Agency may increase the annual estimate of the City's OM&R costs by written notice thereof to the City, and the City shall forthwith increase its remaining monthly payments in such year to the Contracting Officer or the Operating Agency by the amount necessary to cover the estimated insufficiency. All estimates of OM&R costs shall be accompanied by data and computations relied on by the Contracting Officer or the Operating Agency in determining the amounts of the estimated OM&R costs and shall be subject to joint review by the City and the Contracting Officer or the Operating Agency.

(b) Other than as provided for in Exhibit "B" hereto with respect to Assignment Water, the City shall not be required to pay any water service capital charge(s) with respect to Colorado River water or Assignment Water to which the City is entitled under this Contract.

(c) Payment of all OM&R charges becoming due hereunder prior to or on the dates stipulated in Subarticle 9(a) hereof is a condition precedent to receiving water under this Contract.

(d) All payments to be made to the Operating Agency or the United States under Subarticle 9(a) hereof shall be made by the City as such payments fall due from revenues legally available to the City for such payment from the sale of water to its water users and from any and all other sources which might be legally available; Provided, That no portion of the general taxing autho-

rity of the City, nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of this Contract, nor shall such sources be liable for any payments, contributions, or other costs pursuant to this Contract, or to satisfy any obligation hereunder unless duly and lawfully allocated and budgeted for such purpose by the City for the applicable budget year; and Provided, further, That no portion of this Contract shall ever be construed to create an obligation superior in lien to or on a parity with the Cities' revenue bonds now or hereafter issued. The City shall levy and impose such necessary water service charges and rates and use all the authority and resources available to it to collect all such necessary water service charges and rates in order that the City may meet its obligations hereunder and make in full all payments required under this Contract on or before the date such payments become due.

ARTICLE 10
Loss of Entitlement

10. The City shall have no right to delivery of Colorado River water or Assignment Water under this Contract during any period in which the City may be in arrears in the payment of any charges due the United States or the Operating Agency. The Contracting Officer or the Operating Agency may sell to another entity any water determined to be available under the City's entitlement for which payment is in arrears; Provided, however, That, except as provided to the contrary in Exhibit "B" hereto, the City may regain the right to use any unsold portion of the water

determined to be available under the City's original entitlement upon (i) payment of all delinquent charges plus any difference between the contractual obligation and the price received in the sale of the water by the Contracting Officer or Operating Agency and (ii) payment of charges for the current period.

ARTICLE 11
Refusal to Accept Delivery

11. In the event the City fails or refuses in any year to accept delivery of the quantity of water available for delivery to and required to be scheduled by it pursuant to this Contract, or in the event the City in any year fails to submit a schedule for delivery as provided in Article 6 hereof, said failure or refusal shall not relieve the City of its obligation to make the payments required in this Contract.

ARTICLE 12
Charges for Delinquent Payments

12. (a) The City shall be subject to interest, administrative, and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the City shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the City shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the City shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the City shall

. . .

pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

ARTICLE 13
Secretarial Control of Return Flow

13. (a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of CAWCD's service area as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for CAP use return flow which originates or results from water contracted for from the Central Arizona Project within the boundaries of CAWCD's service area if, in his judgment, such return flow is not being put to a beneficial use. The City may recapture and reuse or sell its return flow; Provided, however, That such return flow may not be sold for use outside Maricopa, Pinal, and Pima Counties; and

Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. 5-07-30-W0059). The City shall, at least 60 days in advance of any proposed sale of such water, furnish the following information in writing to the Contracting Officer and CAWCD:

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

(ii) The location and proposed use of the return flow.

(iii) The price to be charged for the return flow.

(b) The price charged for the return flow may cover the cost incurred by the City for Colorado River water and Assignment Water plus the cost required to make the return flow usable. If the price received for the return flow is greater than the costs incurred by the City, as described above, the excess amount shall be forthwith paid by the City to the CAWCD for application against CAWCD's repayment obligation to the United States. Costs required to make return flow usable shall include but not be limited to capital costs and OM&R costs including transportation, treatment, and distribution, and the portion thereof which may be retained by the City shall be subject to the advance approval of CAWCD and the Contracting Officer.

(c) Any return flow captured by the United States and determined by the Contracting Officer and CAWCD to be suitable

and available for use by the City may be delivered by the United States or Operating Agency to the City as a part of the water supply for which the City has subcontracted pursuant to Contract No. 5-07-30-W0059, and such water shall be accounted and paid for pursuant to the provisions thereof.

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

ARTICLE 14
Water and Air Pollution Control

14. The City, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

ARTICLE 15
Quality of Water

15. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. Neither the United States nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. The City waives its right to make a claim against the United States, the Operating Agency, or any subcon-

tractor because of changes in water quality caused by the commingling of water to be delivered under this Contract with other water.

ARTICLE 16
Equal Opportunity

16. During the performance of this Contract, the City agrees as follows:

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

(b) The City will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The City will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising said labor union or workers' representative of the City's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The City will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The City will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the City's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the City may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as pro-

vided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The City will include the provisions of Sub-articles 16(a) through 16(g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The City will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the City becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 17
Compliance with Civil Rights Laws and Regulations

17. (a) The City shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national

origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the City agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

ARTICLE 18
Notices

18. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the City and CAWCD, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States and CAWCD, when mailed, postage prepaid, or delivered to the Manager of the City, 251 West Washington,

Phoenix, Arizona 85003, on behalf of the City and the United States, when mailed, postage prepaid, or delivered to the General Manager, Central Arizona Water Conservation District, 23636 North Seventh Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

ARTICLE 19
Assignment Limited--Successors and Assigns Obligated

19. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid unless and until approved in writing by the Contracting Officer and CAWCD.

ARTICLE 20
Officials Not to Benefit

20. No Member of or Delegate to Congress, Resident Commissioner, or official of the City shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

ARTICLE 21
Transfer of OM&R Responsibility to CAWCD; Project Repayment

21. (a) At or prior to the date that the United States transfers OM&R responsibility for project works associated with delivery of water to the Cities to CAWCD as the Operating Agency, the United States shall secure the agreement of CAWCD to perform the United States' obligations under this Contract to deliver water under this Contract through the transferred works.

(b) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract and any amendment or revision thereof, the costs associated with the delivery of water to the City under this Contract shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

ARTICLE 22
Repayment Contract Controlling

22. Pursuant to the Repayment Contract, the United States has agreed to construct and, in the absence of an approved Operating Agency, to operate and maintain the works of the Central Arizona Project and to deliver Central Arizona Project water to the various subcontractors within CAWCD's service area; and CAWCD has obligated itself for the payment of various costs, expenses, and other amounts allocated to CAWCD pursuant to Article 9 of the Repayment Contract. The City expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this Contract No. 9-07-30-W0240 the day and year first above-written.

THE UNITED STATES OF AMERICA

By _____

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: _____
Secretary

By _____
President

CITY OF PHOENIX, a Municipal
corporation, MARVIN A.
ANDREWS, City Manager

Attest: _____
Clerk

By _____

Approved
as to Form: _____
ACTING City Attorney

Exhibit "A"

CAP Master Repayment Contract

DUPLICATE-ORIGINAL

Contract No. 14-06-w-245
Amendment No. 1
B.C. Draft 11/28/88

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

1. PARTIES

The parties to this contract, executed as of this first day of December, 1988, are the United States of America, acting through the Department of the Interior, and the Central Arizona Water Conservation District, a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona.

2. AUTHORITIES

This contract is made pursuant to the:

2.1 Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto.

2.2 Boulder Canyon Project Act, approved December 21, 1928, 45 Stat. 1057, a supplement to the Federal Reclamation Laws.

2.3 Reclamation Project Act of 1939, approved August 4, 1939, 53 Stat. 1187, as amended.

2.4 Colorado River Basin Project Act, approved September 30, 1968, 82 Stat. 885, as amended, a supplement to the Federal Reclamation Laws.

2.5 Arizona Revised Statutes, Section 48-3701 et seq.

3. RECITALS

3.1 The Colorado River Basin Project Act provides, among other things, that for the purposes of furnishing irrigation water and municipal and industrial water supplies to water-deficient areas in 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, consisting of the principal works hereinafter described in Article 6.3.

3.2 Pursuant to the provisions of Arizona Revised Statutes, Section 48-3701 et seq., the Central Arizona Water Conservation District 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, Section 48-3701 et seq.

3.3 On December 15, 1972, the United States and the Contractor entered into a contract entitled "Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), whereby, among other things, the United States agreed to construct the Central Arizona Project and the Contractor agreed to repay the costs of the project properly allocable to the Contractor.

3.4 Subarticle 9.3(b) of said contract provides that the Contractor's repayment obligation shall not exceed $1.2 billion.

3.5 Subarticle 9.3(b) of said contract also provides that if the

Contractor's repayment obligation will exceed $1.2 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation.

3.6 Both parties acknowledge that the Contractor's repayment obligation will exceed $1.2 billion, and have agreed to increase the Contractor's repayment ceiling to a level sufficient to facilitate completion of the project.

4. ARTICLES OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is agreed by and between the parties hereto as follows:

5. DEFINITIONS

When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the terms:

5.1 "Federal Reclamation Laws" or "Reclamation Laws" shall mean the Act of June 17, 1902, 32 Stat. 388, and all acts amendatory thereof or supplementary thereto.

5.2 "Basin Project Act" shall mean the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, as amended, which is a supplement to the Federal Reclamation Laws.

5.3 "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

5.4 "Contracting Officer" shall mean the Secretary or his authorized designee acting in his behalf.

5.5 "Contractor" shall mean the Central Arizona Water

Conservation District, organized pursuant to Arizona Revised Statutes, Section 48-3701 et seq.

5.6 "Service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties of Arizona and such other counties as may hereafter become part of the District, exclusive of any Indian reservation land lying wholly or partly within said Counties.

5.7 "Subcontractor" shall mean any irrigation district, municipality, individual, or any entity which enters into a water service subcontract with the United States and the Contractor in furtherance of the provisions of the Basin Project Act.

5.8 "Central Arizona Project" or "project" shall mean the project and works authorized by Section 301(a) of the Basin Project Act and constructed by the United States pursuant to the provisions of said Act and this contract.

5.9 "Project works" shall mean the principal works described in Section 301(a) of the Basin Project Act, and appurtenances thereto, or as modified pursuant to Article 6.4 hereof, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

5.10 "Water supply system" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt Gila and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

5.11 "Distribution works" shall mean those facilities constructed or financed by the United States under the authorization in Section 309(b) of the Basin Project Act for the primary purpose of

distributing the project water supply within the service area after said project water supply has been transported or delivered through the water supply system.

5.12 "Agricultural water" or "irrigation water" shall mean project water used primarily in the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than 5 acres.

5.13 "Miscellaneous water" shall mean water delivered from the project, or by exchange for project water, for recreational and fish and wildlife purposes at other than project facilities and shall have a lesser priority of use than agricultural water.

5.14 "Municipal and industrial water," herein referred to as "M&I water," shall mean project water other than agricultural or miscellaneous water delivered by means of the project works.

5.15 "Lands not having a recent irrigation history" shall mean, except where otherwise determined by the Secretary for efficiency of subcontractor's operation, lands which the Secretary determines were not irrigated during the period September 30, 1958, to September 30, 1968.

5.16 "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

5.17 "Exchange water" shall mean Colorado River water made available in exchange for or in replacement of existing supplies from surface sources other than the mainstream of the Colorado River.

5.18 "Transferred works" shall mean such facilities of the water supply system or of other construction stages as to which OM&R

responsibility is transferred from the United States to the Operating Agency.

5.19 "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

5.20 "Transfer notice" shall mean a written notice or notices, numbered consecutively, which the Contracting Officer transmits to the Operating Agency and which shall designate:

(a) the transferred works;

(b) items of equipment and supplies transferred to the Operating Agency; and

(c) the date upon which such transfer will be effected.

5.21 "Gila River system waters" shall mean waters of the Gila River and tributaries thereof east of the Yuma-Maricopa County line.

5.22 "Notice of completion" shall mean the notice which the Contracting Officer issues to Contractor to announce the substantial completion of a construction stage. Each such notice of completion shall include the estimated amount of the repayment obligation for the construction stage to which the notice pertains, the date of initiation of repayment for the construction stage and indicate the amount and due date for the first payment for the construction stage.

5.23 "Development Fund" shall mean the separate fund, known as the Lower Colorado River Basin Development Fund, established in the Treasury of the United States pursuant to Section 403(a) of the Basin Project Act.

5.24 "Year" shall mean the period January 1 through the next

succeeding December 31.

5.25 "Contractor's Construction Cost Repayment Obligation," hereinafter referred to as "repayment obligation," shall mean the total amount of all construction costs including related construction claims and interest thereon, OM&R costs during construction, and interest on costs allocated to the M&I water and power functions during construction, of the Central Arizona Project, incurred therefor and as determined by the United States and further described in Article 6.2 hereof, excluding reimbursable costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors, and which is determined by the Secretary, after consultation with the Contractor, to be allocable to and repayable by the Contractor in accordance with the provisions of the Basin Project Act and this contract.

5.26 "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from water contracted for from the Central Arizona Project, but shall not include any water delivered through the project works for ground water recharge purposes.

5.27 "Project water" shall mean (a) all water allocated by the Secretary for project purposes by Federal Register notice dated March 24, 1983, and any subsequent reallocation by the Secretary as contemplated in paragraph 6 of said Federal Register notice, which water is available pursuant to contracts with the Secretary from: (1) the Colorado River; (2) Central Arizona Project dams and reservoirs; and (3) return flows captured by the Secretary for project use; (b) any water

delivered to entities in Arizona, through the project works, as a replacement supply for Cliff Dam; (c) water delivered to water users in Arizona, through the project works, in exchange for water delivered to users in New Mexico from or by means of the project works; and (d) any additional water not included in (a) above, that is required to be delivered by the Secretary through the project, pursuant to the Ak-Chin Water Rights Settlement Act of 1978 (Public Law 95-328), as amended on October 19, 1984 (Public Law 98-530); the Southern Arizona Water Rights Settlement Act of October 12, 1982 (Title III of Public Law 97-293); and, subject to the execution of a settlement agreement by the Contractor providing for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community and to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (Public Law 100-512), up to 22,000 acre-feet annually of Colorado River water to be delivered through the project works in accordance with said settlement agreement and legislation.

5.28 "Indian lands" shall mean the lands within any Indian reservation for which an allocation of project water has or will be made by the Secretary for delivery through project works.

5.29 "Navajo Project" shall mean the interests of the United States in the Navajo Generating Station and the Transmission System, or any replacement thereof, as authorized by Section 303 of the Basin Project Act and as described in contracts entered into pursuant to that Act.

5.30 "Construction stage" shall mean any one of the following: (1) the water supply system; (2) New Waddell and Modified Roosevelt Dams; (3) replacement features or programs for Cliff Dam; (4) Tucson terminal storage; (5) Hooker Dam or suitable alternative; and (6) Buttes Dam.

5.31 "Plan 6" shall mean Plan 6 for the Regulatory Storage Division of the Central Arizona Project as approved by Record of Decision of the Secretary dated April 3, 1984 as amended and supplemented by Records of Decision of the Secretary dated May 20, 1986 (Supplement One) and June 17, 1988 (Supplement Two).

5.32 "Allocable cost" shall mean (a) with respect to the project, the total project cost less (1) the cost of non-Indian distribution works, (2) the cost of the safety of dams component of Plan 6, (3) the cost of Indian distribution systems, (4) the cost of the Colorado River Division and the New Mexico fish hatchery, (5) the cost of cultural resources studies, (6) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (7) the costs of Charleston Dam and San Pedro Aqueduct, (8) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (9) such other costs as determined appropriate by the Contracting Officer; and (b) with respect to each construction stage, the total cost of such stage less that portion of the following costs associated with such stage: (1) the cost of the safety of dams component of Plan 6, (2) the cost of cultural resources studies, (3) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (4) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (5) such other costs as determined appropriate by the Contracting Officer.

5.33 "OM&R Transfer Contract" shall mean the August 5, 1987, contract entitled "Contract Between the United States of America and the

Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities" (Contract No. 7-07-30-W0167), and any amendment or revision thereof.

5.34 "Overall repayment period" shall mean the period of time beginning with initiation of repayment of the first construction stage and ending with final payment of the last construction stage.

5.35 "Plan 6 Funding Agreement" shall mean the April 15, 1986, agreement entitled "Agreement Among the United States, the Central Arizona Water Conservation District, the Flood Control District of Maricopa County, the Salt River Agricultural Improvement and Power District and Salt River Valley Water Users' Association, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, the State of Arizona, and the City of Tucson for Funding of Plan Six Facilities of the Central Arizona Project, Arizona, and for other Purposes," as it may be supplemented or amended.

5.36 "Permanent service" shall mean that water supply service commencing in the year following substantial completion of the water supply system and continuing in perpetuity.

5.37 "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be amended or revised.

5.38 "Project power" shall mean the United States' entitlement to capacity and energy from the Navajo Project.

6. PROJECT CONSTRUCTION

6.1 Agreement of the United States. Subject to the terms and

conditions of this contract and within the limits of the funds made available therefor by Congress, the United States will expend toward the construction of the project, exclusive of interest costs during construction, $832,180,000 based on 1967 cost estimates, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein, or so much of such amount, as in the opinion of the Secretary, is necessary to construct said project, whichever amount is the lesser. The aforementioned amount includes the United States' costs of participation in the Navajo Project.

6.2 Costs of Project.

(a) The estimated construction cost of $832,180,000 for the project, based upon 1967 prices, has been determined as follows:

	$ 1,000's
Main System	
Granite Reef Division	407,740
Orme Division	42,340
Salt-Gila Division	47,170
Tucson Aqueduct (Colorado River source)	46,300
Buttes Dam	35,240
Navajo Project	106,000
Subtotal	684,790
Other Separate Features	
Hooker Dam or suitable alternative	31,730
Charleston Dam and San Pedro Aqueduct (San Pedro River source)	36,420
Subtotal	68,150
Miscellaneous Features	
*Gila River Division	5,250
Indian Distribution System	19,970
Colorado River Division	42,450
Drainage System	11,570
Subtotal	79,240
Total Project	$832,180

*Note: Fish hatchery costs, some of which may be located on the Colorado River.

Provided, however, That (i) the adjustment provisions of Article 6.1 apply

to the total construction costs of the project and not to the costs of the individual line items set out in this Subarticle 6.2(a), and (ii) in accordance with provisions of Article 6.4 herein, the references to the individual line items set out in this Subarticle 6.2(a) are not to be deemed a determination that each of the features referred to in the individual line items will be constructed or that costs will be incurred for each of said individual line items based upon a percentage which the estimated costs for each individual line item bears to the project's total estimated construction costs.

(b) The Central Arizona Project costs incurred by the United States which are to be repaid by Contractor shall include the share allocated to the Contractor of (i) construction costs of the project, (ii) all expenses of whatsoever kind or nature heretofore or hereafter incurred by the United States in connection with, growing out of, or resulting from the construction, and (iii) the OM&R during construction of project works. The aforementioned share of allocated costs shall also include, but shall not be limited to, interest during construction on costs allocated to the M&I water and power functions, the cost of labor, materials, equipment, engineering, legal services, surveys, investigations, property, superintendence, administration, overhead, general expenses, special services, damages of all kinds and character, inspection, repair, and protection of project works and water supply, and the costs of all lands, interests in lands, and rights-of-way acquired by the United States for the project, all as determined by the Secretary.

6.3 Principal Works of the Project. The works and facilities to be constructed under this contract shall consist of the following principal

works:

(a) A system of main conduits and canals, including the Havasu Pumping Plant and a main canal and pumping plants (Granite Reef Aqueduct and pumping plants), for diverting and carrying water from Lake Havasu to the confluence of the Salt and Verde Rivers, which system will have a capacity of 3,000 cubic feet per second;

(b) Salt-Gila Aqueduct and pumping plant;

(c) Tucson Aqueduct and pumping plants;

(d) New Waddell and Modified Roosevelt Dams;

(e) replacement features or programs for Cliff Dam;

(f) Tucson Terminal Storage (if approved by the Secretary);

(g) Buttes Dam and Reservoir;

(h) Hooker Dam and Reservoir or suitable alternative which shall be constructed in such manner as to give effect to the provisions of Section 304(f) of the Basin Project Act;

(i) Charleston Dam and Reservoir and the San Pedro Aqueduct;

(j) related canals, regulating facilities, and electric transmission facilities required for the operation of said principal works;

(k) related water distribution and drainage works; and

(l) appurtenant works.

No works or facilities for the treatment of water are included in the project works to be constructed by the United States. Nothing contained herein shall be construed to indicate the order in which the aforedescribed works will be constructed.

6.4 Changes in Project Works. Should the Secretary, either before or during construction, determine it to be in the best interests of

the project, he may, upon the completion of the studies currently being made or to be made, including land classifications, hydrological, engineering, geological, sedimentation, water supply, and repayment ability, and after consultation with the Contractor, change the location, size, or capacity of any of the project works, or may eliminate works, or add works to those described above, and the Secretary's decision on such changes, eliminations, and additions shall be conclusive.

6.5 Construction Conditions. The United States shall be under no obligation to commence or, having commenced, to continue construction of project works until transfer from the State of Arizona of such State-owned lands or interests therein, in a form acceptable to the Attorney General of the United States, as the Secretary determines is necessary in the construction, operation, or maintenance of the project.

6.6 Annual Work Program. During construction of the project works the Contracting Officer will consult with the Contractor and/or with any subcontractor through or within whose service area project works are to be constructed to achieve maximum coordination between such construction program and the annual programs of any affected subcontractor. Within 30 days following the enactment by Congress and Presidential approval of annual or supplementary appropriation acts and the allotment of funds thereunder for continued construction of the project, the United States will furnish the Contractor with a notice and statement showing the proposed construction program for the balance of the current fiscal year and for the following fiscal year or years. If so requested in writing by the Contractor within 30 days of its receipt of such notice, the Secretary will consult with the Contractor and/or the affected subcontractor with respect

to the proposed program. The action of the Contracting Officer concerning the program after such consultation shall be final.

6.7 Inability of the United States to Complete Project on Basis of Cost Estimates. If construction of the project works shall have been commenced but, prior to completion, the Secretary determines that the cost of constructing the project will exceed the maximum amount to be expended therefor by the United States as provided for in Article 6.1 hereof, the Secretary may after consultation with the Contractor terminate construction and declare the obligations of the United States hereunder with regard to completion of construction of the project to have been fulfilled. If appropriations for the continuance and/or completion of construction in amounts sufficient in the opinion of the Secretary to complete said construction are authorized by Congress and are available, the Secretary shall consult with the Contractor and shall make continuation of construction contingent upon the execution of an amendatory contract with the Contractor wherein the Contractor's maximum repayment obligation is increased so as to cover the increased reimbursable costs as determined by the Secretary; Provided, however, That the Contractor shall not utilize any part of the completed or unfinished project facilities in the absence of written agreement with the Secretary for reimbursement therefor.

7. PROJECT OPERATION, MAINTENANCE, AND REPLACEMENT

7.1 Operation and Maintenance and Water Deliveries by the United States Prior to Completion of Construction. Except as provided in the OM&R Transfer Contract, prior to completion of project works by the United States, as determined and announced to the Contractor in writing by the Secretary, the United States will operate and maintain said project

facilities. The cost of said OM&R allocated to the Contractor shall be included in the Contractor's repayment obligation; Provided, however, That said OM&R cost shall not be included with the project cost ceiling set out in Article 6.1 hereof. During the aforesaid period, project water, if available, may be disposed of by the Secretary at charges which the Secretary determines to be appropriate; Provided, however, That to the extent deemed feasible by the Secretary, preference will be given to subcontractors and Indian lands. Payment for water shall be made in advance by the water user. The places of measurement and delivery of said water shall be established by the Secretary after consultation with the Contractor. Except as provided in the OM&R Transfer Contract, the proceeds accruing from the disposal of such water shall be credited to the Development Fund and applied toward the costs of the project as determined by the Secretary.

7.2 Operation and Maintenance and Water Deliveries after Completion of Construction. Except as provided in the OM&R Transfer Contract and any future agreements for the transfer of OM&R of the project works or portions thereof, upon completion of construction of a construction stage or upon completion of construction of the project, the United States shall operate and maintain such construction stage or the project and shall make project water available to project water users.

8. DELIVERY OF WATER

8.1 Obligation of United States. Subject to the terms, conditions, and provisions set forth herein, the United States will deliver project water to Contractor and, during such periods as it operates and maintains the water supply system, the United States will also transport and

deliver said water to the subcontractors. After transfer of OM&R the United States will make deliveries of Colorado River water to the Operating Agency; deliveries of other project waters will be made pursuant to determinations made by the Secretary.

8.2 Term of Contract. Subject to the terms, conditions, and provisions set forth herein, this contract is for permanent service.

8.3 Conditions Relating to Delivery.

(a) The obligation of the United States to deliver water under this contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, dated September 30, 1968, 82 Stat. 885; the contract between the United States and the State of Arizona, dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of Arizona v. California et al., 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, as now issued or hereafter modified.

(ii) Executive A, Seventy-eighth Congress, Second Session, a treaty between the United States of

America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the water of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty.

(iii) The express understanding and agreement by the Contractor that this contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and the Contractor shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam,

Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to Contractor hereunder.

(iv) The right of the United States temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works whatsoever affecting, utilized or, in the opinion of the Secretary, necessary for delivery of water hereunder, it being understood that so far as feasible the United States will (1) do so during periods of low water demands and (2) give reasonable notice in advance of such temporary discontinuance or reduction.

(b) Delivery of Colorado River water by the United States under this contract shall be charged to the State of Arizona's apportionment under the aforementioned Supreme Court Decree of March 9, 1964, in Arizona v. California and will discharge to that extent the obligation of the United States to deliver water under the aforementioned contract between the United States and the State of Arizona, dated February 9, 1944.

8.4 Delivery Points. Colorado River water to be furnished to the Contractor pursuant to this contract will be delivered by the United States in the Colorado River at the point of diversion from Lake Havasu where the intake structures of the Havasu Pumping Plant are

constructed. Agua Fria and Upper Gila River system waters will be delivered to the Contractor at New Waddell and Buttes Dams, respectively. Delivery points for other project water supplies and for return flows will be determined by the Contracting Officer after consultation with the Contractor and/or the affected subcontractor therefor.

8.5 Measurement.

(a) The quantity of Colorado River water pumped from Lake Havasu for the project shall be measured by means of measuring devices to be installed as part of the project works. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available, estimate the amount of water delivered to the Contractor.

(b) Deliveries of project water to the various subcontractors shall be measured by means of measuring devices to be installed as part of the project works at the points along the various aqueducts at which such water may be diverted for each of said subcontractors, and/or at the points in the various reservoirs formed by the dams constructed as part of the project works at which such water may be diverted for subcontractors and/or at the points where return flow may be delivered. These points of measurement will be established by the Secretary after consultation with Contractor and the affected subcontractor. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available and after consultation with the Contractor and the affected subcontractor, estimate the amount of water delivered to each such subcontractor. The Secretary shall at all times have access over any lands

and rights-of-way of a subcontractor for the purpose of inspecting and checking said measuring devices.

8.6 Responsibility for Distribution of Water after Leaving Water Supply System. Whether or not the United States operates and maintains the project facilities, the United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water after said water has been diverted from the water supply system. At such time as the Operating Agency assumes responsibility for the OM&R of project works, the responsibility for diversion, carriage, and transportation of the water through the water supply system shall be the sole responsibility of the Operating Agency. Responsibility for distribution of water beyond the water supply system shall be that of the subcontractors to whom said water is delivered from the water supply system. The United States, its officers, agents, and employees, shall not be liable for damage or claim of damage of any nature whatsoever for which there is legal responsibility arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water, and each subcontractor shall hold the United States, its officers, agents, and employees, harmless from any and all such claims.

8.7 Quantity of Water to be Delivered.

(a) The Secretary reserves the right to determine that quantity of Colorado River water to be released each year from Lake Mead for use by the Central Arizona Project pursuant to applicable law, which shall include the quantity of water which may be allocated by the Secretary for use on Indian lands.

(b) The quantity of Colorado River water available under

this contract for project purposes shall not exceed the quantity of water available to Arizona under the aforementioned Supreme Court Decree in Arizona v. California and in Arizona's water delivery contract with the United States after first providing for satisfaction of:

(i) present perfected rights and perfected rights described in Article II(D) of the Decree and the rights of other Federal reservations established prior to September 30, 1968; Provided, however, That the quantities of Colorado River water reserved to satisfy the aforesaid rights shall not, except as provided in said Decree, be reduced under any circumstances or for any reason whatsoever including, without limitation, a temporary use permitted by the Secretary by other water users in Arizona, California, or Nevada, of water reserved pursuant to the foregoing but not needed during any calendar year; And provided further, That no rights to the recurrent use of such water shall accrue by reason of said temporary use; and

(ii) the quantities of water provided for in all water delivery contracts between the United States and water users in Arizona as of September 30, 1968.

(c) The quantity of Colorado River water available under this contract for project purposes, including water for use on Indian lands

shall have the same priority as to delivery as the quantities of Colorado River water delivered pursuant to water delivery contracts, Federal reservations of water, and other arrangements between the United States and water users in Arizona entered into subsequent to September 30, 1968, for use of Colorado River water on Federal, State or privately owned lands in Arizona in total quantities not to exceed 164,652 acre-feet of diversions per year; Provided, however, That the Contractor shall hold the United States, its officers, agents, employees, and successors or assigns, harmless as to any and all claims for damages to persons or to property direct or indirect and of whatever nature, arising out of or which may in any manner be connected with the operation and/or effect of this Subarticle.

(d) The limitation on contracting in Subarticle 8.7(c) above shall not apply to contracts with holders of present perfected rights to Colorado River water in Arizona or to the Secretary's order of November 24, 1982, reserving Colorado River water for the Cibola National Wildlife Refuge. Nothing in Subarticle 8.7(c) shall restrict the right of the Secretary under water service contracts referred to in said Subarticle to terminate and/or reduce any entity's entitlement to Colorado River water and to make that entitlement available to other water users in Arizona.

(e) During any year when the subcontractors cannot use any portion of their entitlement to project water, and such water cannot be resold or exchanged in accordance with the terms and conditions of the water service subcontracts, the Contractor shall have the right in its discretion to resell any or all of such water or to use any or all of such water for ground water recharge purposes, including the subsequent recovery and resale

of such water, subject to Federal law, including but not limited to the Reclamation Reform Act of 1982, State of Arizona law, and such rules and regulations as the Secretary may deem appropriate. Subject to the terms and conditions of water service subcontracts, the water orders of all subcontractors shall be met before any project water is made available to the Contractor under this provision.

8.8 Subcontracts.

(a) The United States shall be a party to subcontracts.

(b) The Secretary and the Contractor shall require in each subcontract that:

(i) unless and until otherwise provided by Congress, water from the Central Arizona Project shall not be made available directly or indirectly for the irrigation of lands not having a recent irrigation history, as determined by the Secretary, except in the case of Indian lands, national wildlife refuges, and, with the approval of the Secretary, State-administered wildlife management areas;

(ii) there be in effect measures, adequate in the judgment of the Secretary and the Contractor, to control expansion of irrigation from aquifers affected by irrigation in the Contractor's service area and to reduce pumping of ground water in the agricultural subcontractors' service areas by the amount of project water received by said agricultural subcontractors;

(iii) the canals and distribution systems through which water is conveyed after its delivery to the subcontractors shall be provided and maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses;

(iv) neither the Secretary, the Contractor nor any subcontractor shall pump or permit others to pump ground water from within the exterior boundaries of the service area of a subcontractor receiving water from the Central Arizona Project for any use outside of said subcontractor's service area unless the Secretary, the Contractor, and such subcontractor shall agree, or shall have previously agreed, that a surplus of ground water exists and that drainage is or was required;

(v) except as otherwise agreed by the Contracting Officer, neither the Contractor nor any subcontractor shall sell or otherwise dispose of or permit the sale or other disposition of any project water, including return flows, for use outside the Contractor's service area;

(vi) irrigation water made available thereunder may be made available by the Secretary for M&I purposes if and to the extent that such water is no longer required by the subcontractor for irrigation purposes and shall be made available in all cases

where lands receiving project water have been converted to municipal and industrial use; Provided, however, That subcontracts effectuating such transfers are subject to the approval of the Secretary and the Contractor, which approval shall not be withheld unreasonably; And provided further, That it shall be deemed unreasonable for the Secretary or the Contractor to withhold such approval on the basis that the right to convert from irrigation to M&I use for a specific development could better be exercised in some other subcontractor's service area. The water so converted from irrigation to M&I purposes will be delivered with the same priority and at the same rate per acre-foot as other M&I water. Likewise, subcontracts for furnishing water for M&I purposes, including, but not limited to, ground water recharge to the extent ground water recharge is consistent with Arizona law, shall provide that, if water to be delivered thereunder is not presently required for such purposes, such water may be made available by the Secretary to other users; Provided, further, That the subcontractor shall be relieved of its payment obligation under its subcontract only to the extent of the amount paid by such other users;

(vii) the acreage limitation provisions of Reclamation Laws shall apply solely to agricultural water service;

(viii) except as specifically provided therein, it shall be the provisions of this contract which shall be controlling in the event of any inconsistency between this contract and any subcontract;

(ix) the subcontractor shall levy all necessary assessments, tolls, and other charges and shall use all of the authority and resources available to the subcontractor to collect the same in order that the subcontractor may meet its obligations thereunder to make in full all payments required under said subcontract on or before the date such payments become due and to meet other obligations under the subcontracts;

(x) the subcontractor establish, maintain, and provide the United States and the Contractor with land, water use, and crop census records.

8.9 Shortages. As provided in Section 301(b) of the Basin Project Act, Article II(B)(3) of the Decree of the Supreme Court of the United States in Arizona v. California, 376 U.S. 340, dated March 9, 1964, shall be so administered that in any year in which, as determined by the Secretary, there is insufficient mainstream Colorado River water available for release to satisfy the annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada, diversions from the mainstream of the

Colorado River for the Central Arizona Project and for other uses in Arizona under contracts or other agreements with the United States executed subsequent to September 30, 1968, shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under contracts existing as of September 30, 1968, with the United States by diversion works heretofore constructed, and by other Federal reservations in California of 4,400,000 acre-feet of Colorado River water, and by users of the same character in Arizona and Nevada. Water users in the State of Nevada shall not be required to bear shortages in any proportion greater than would have been imposed in the absence of said Section 301(b), nor shall said Section affect the relative priorities, among themselves, of water users in Arizona, California, and Nevada which are senior to diversions for the Central Arizona Project, or amend any provisions of said Decree. The aforesaid limitation stated in Section 301(b) shall not apply so long as the Secretary shall determine and proclaim that means are available and in operation which augment the water supply of the Colorado River system in such quantity as to make sufficient Colorado River mainstream water available for release to satisfy annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada.

8.10 Rate of Diversions of Colorado River Water. Subject to (a) the first proviso in Section 301(a) of the Basin Project Act, (b) the provisions of Subarticle 10.6(b) hereof, and (c) the provisions of Subarticle 8.7(a) hereof, any capacity in the Granite Reef Aqueduct in excess of 2,500 cubic feet per second may be utilized in the operations of

the project so as to maximize project benefits: Provided, however, That the use of such capacity shall not result in the annual diversion of a quantity of water in excess of the project's legal entitlement under the Basin Project Act.

8.11 Priority in Case of Shortage.

(a) Subject to the provisions of Section 304(e) of the Basin Project Act and the Secretary's allocation decisions published in the Federal Register on December 10, 1980, and March 24, 1983, any project water as defined in Subarticle 5.27(a) hereof, furnished through project facilities shall, in the event of shortages thereof, be reduced pro rata until exhausted, first for miscellaneous uses and next for agricultural uses, before such project water furnished for M&I uses is reduced. Thereafter, such project water for M&I uses will be reduced pro rata among all M&I water users. Each subcontract or other water delivery arrangement entered into pursuant to this contract shall so provide. This article shall not apply to Indian uses; Provided, however, That the relative priorities between Indian and non-Indian uses shall be as determined by the Secretary. Notwithstanding the provisions of this Subarticle, project water made available as a result of construction and operation of modifications to Roosevelt Dam as part of Plan 6 shall be distributed as provided in the Plan 6 Funding Agreement, and shall not be subject to reduction in the event of shortages of other project water supplies.

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

8.12 No Guarantee of Availability of Water. The United States

assumes no responsibility with respect to the quantity of water available for delivery pursuant to this contract. In no event shall the United States, its officers, agents, or employees, be liable for any damages, direct or indirect, of whatsoever nature, arising out of or in any way connected with any suspension or reduction in the delivery of water pursuant to this contract or with any shortage in the quantity of water available for delivery hereunder or to any subcontractor for any cause whatsoever including, but not limited to, drought, delay in the construction of the Navajo Project, the failure of the Navajo Project to be completed, or the lack of power for pumping.

8.13 Secretarial Control of Return Flow.

(a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of the Contractor as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for project use return flows within the boundaries of Contractor if in his judgment such return flow is not being put to a beneficial use. Any subcontractor may sell its return flow; Provided, however, That except as otherwise agreed by the Contracting Officer, such return flow may not be sold for use outside the Contractor's exterior boundaries; And provided further, That if the price received for such return flow is higher than the price paid for such project water, the amount of the excess price shall be paid by such subcontractor to the Contractor for application against the Contractor's repayment obligation to the United States.

(b) Any return flow captured by the United States and determined by the Secretary to be suitable and available for use on lands

within the service area and/or by any subcontractor therein may be delivered by the United States to a subcontractor as a part of the water supply for which the subcontractor contracts hereunder and such water shall be accounted and paid for pursuant to the provisions hereof.

8.14 Water and Air Pollution Control. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

8.15 Quality of Water. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of project water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer or the Operating Agency. Neither the United States nor the Operating Agency warrants the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

8.16 Exchange Water. Where the Secretary determines that a subcontractor is physically able to receive Colorado River mainstream water in exchange for or in replacement of existing supplies of surface water from sources other than the Colorado River to provide water supplies for users upstream from New Waddell, Modified Roosevelt and Buttes Dams, the Secretary may require that said subcontractor agree to accept said mainstream water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act.

8.17 Rights Reserved to the United States to Have Water Carried by Project Facilities. As a condition to the construction of project facilities and the delivery of water hereunder, the Contractor agrees that all project facilities will be available for the diversion, transportation, and carriage of water for Indian and non-Indian uses pursuant to arrangements or contracts therefor entered into on their behalf with the Secretary. In the event the responsibility for the OM&R of project facilities is transferred to and assumed by the Operating Agency, such transfer shall be subject to the condition that the Operating Agency shall divert, transport, and carry such water for such uses pursuant to the provisions of the aforesaid arrangements or contracts; Provided, however, That the aforesaid arrangements or contracts will include provisions for the payment of applicable construction costs and OM&R costs in accordance with Articles 9.3 and 9.6 of this contract.

8.18 Wheeling Non-Project Water. After taking into consideration the water delivery requirements of contracts for project water service and subject to availability of project capacity, non-project water may be wheeled through project facilities pursuant to wheeling agreements between the Contractor and the entity desiring to use project facilities for wheeling purposes. All such agreements shall be subject to the approval of the Contracting Officer who shall consider, among other things, the impact that the wheeling of such non-project water will have on the quality of project water. The Contractor and the Contracting Officer shall jointly develop a standard form of wheeling agreement including the rate structure for wheeling non-project water. All wheeling charges shall be paid to the Contractor by the entity contracting for the wheeling of non-project water.

The Contractor shall be entitled to retain revenues from wheeling charges sufficient to cover all OM&R costs associated with wheeling such non-project water, plus an administrative charge to be jointly determined by the Contractor and the Contracting Officer. All revenues from wheeling charges in excess of the OM&R costs and administrative charges shall be remitted by the Contractor to the Contracting Officer and deposited into the Development Fund.

8.19 Use of Project Power to Wheel Non-Project Water. If the energy requirements necessary for the pumping of project water are met and subject to the requirements of the Navajo Power Marketing Plan published in the Federal Register on December 21, 1987, project power may be used to wheel non-project water through project facilities under such conditions of use, including amounts, times of use, losses, costs, and other conditions as are established by the Contractor and approved by the Contracting Officer.

9. PAYMENT OF PROJECT COSTS ALLOCATED TO CONTRACTOR

9.1 Allocation of Construction Costs.

(a) Upon completion of each construction stage, the Contracting Officer will allocate costs to the various project purposes using the separable costs-remaining benefits procedure.

(b) For repayment purposes the reimbursable cost allocated to irrigation and M&I water by the separable costs-remaining benefits procedure will be combined and will hereinafter be termed the "water supply allocation." Upon completion of each construction stage, and at the periodic intervals specified in Subarticle 9.3(d), suballocation of the water supply allocation will be made to the irrigation and M&I water functions proportional to the water estimated to be used for each purpose

during the repayment period of each construction stage. The cost thus suballocated to the irrigation function will hereinafter be termed the "interest-free allocation." The cost thus suballocated to the M&I water function shall be added to the cost allocated to the commercial power function, plus interest during construction for both, and the sum will hereinafter be termed the "interest-bearing allocation."

(c) During construction, simple interest at the rate of 3.342 percent per annum shall be charged on costs allocated to the interest-bearing function as adjusted by the Secretary (i.e., net disbursements reduced by contract holdbacks, revenues applied to construction cost, and nonreimbursable expenses financed from construction funds). The total amount of all interest thus accumulated through the construction period prior to the date of completion of each construction stage shall be added to and become part of the actual construction cost of each construction stage. Interest during construction shall not accrue during any period in which construction is deferred or postponed by the United States as a result of a national emergency, as determined by the Secretary, if authority to forego such interest exists or is made available to the Secretary.

9.2 Repayment Concepts.

(a) Costs suballocated to non-Indian irrigation water will be paid by the subcontractors to the Contractor on the basis of their ability to pay as determined by the Secretary.

(b) Costs allocated to commercial power and costs suballocated to M&I water use shall be combined and repaid with interest at a rate of 3.342 percent per annum on the unpaid balance.

(c) Reimbursable costs allocated to recreation and fish

and wildlife are anticipated to be covered by a separate contract and repaid by the beneficiaries thereof.

(d) Repayment of costs allocated to irrigation of Indian lands shall be governed by the provisions of Section 402 of the Basin Project Act.

(e) Repayment of the project will occur by construction stages, with each stage having a separate 50-year repayment schedule. Upon completion of each cost allocation study referred to in Subarticle 9.1(a), subsequent to the initial study associated with the first construction stage, the Contractor's repayment obligation and the obligation allocated to each construction stage will be adjusted based on the latest cost allocation study, and the Contractor will be provided with a revised repayment schedule for the project and each construction stage. The Contracting Officer will adjust previous principal and interest payments made by the Contractor to reflect the new repayment schedule. For each year where an adjustment in payments is necessary, there will be an over or underpayment which will accrue with interest at the rate of 3.342 percent per annum (compounded annually) to the adjustment date. If the adjustment indicates that the Contractor overpaid principal and interest, the Contractor shall be entitled to a credit against its next payments to the United States. Conversely, if the Contractor owes additional principal and interest to the United States, such amount shall be paid to the United States by the Contractor within 12 months of receipt of a statement therefor from the Contracting Officer. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

9.3 Contractor's Construction Cost Repayment Obligation.

(a) The Contractor's repayment obligation shall consist of the total cost allocated to the water supply and power functions plus OM&R during construction and interest during construction on costs allocated to the M&I water and power functions, but shall not include costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors. Such entities shall include but not be limited to Indian tribes and councils in central Arizona receiving project water and the New Mexico recipients of water service from Hooker Dam or suitable alternative. The costs to be excluded shall be calculated as follows:

(i) Costs excluded from the Contractor's repayment obligation for New Mexico water service shall be determined by multiplying the project costs allocated to the water supply function by the ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to water users in Arizona in exchange for water delivered to users in New Mexico from or by means of project works, by the total quantity of Colorado River water projected to be delivered by the project throughout the overall repayment period.

(ii) The amount of other project costs which shall be excluded from the Contractor's repayment obligation shall be determined by multiplying the

project costs allocated to the water supply function by a ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to entities other than the Contractor, the subcontractors, and those users in New Mexico to whom water has been made available through the construction of Hooker Dam or suitable alternative by the total quantity of project water projected to be delivered throughout the overall repayment period; Provided, That project water projected to be delivered to such users will be computed based on an assumption of full development not later than the year 2005.

(b) The costs determined under Subarticles 9.3(a)(i) and (ii) above shall be subtracted from the water supply costs obtained from the separable costs-remaining benefits procedure to determine the Contractor's water supply costs. The Contracting Officer shall suballocate the Contractor's water supply costs to each of the construction stages based on the ratios obtained by dividing the allocable cost of the construction stage by the allocable cost of the project (see Operation 1, Exhibit "A"). The water supply costs assigned to each construction stage are then further suballocated between irrigation and M&I water use in proportion to projected total water deliveries to each function over the 50-year repayment period of each construction stage (Operation 2, Exhibit "A"). The summarization of the suballocations to each construction stage determines the total water

supply cost to be assigned to irrigation and M&I water use (Operation 3, Exhibit "A"). To determine the Contractor's repayment obligation, the Contractor's water supply suballocation to irrigation and M&I water uses, and the power allocation from the separable costs-remaining benefits procedure, shall each be adjusted for any revenues received by the United States prior to the notice(s) of completion and for any contributions received by the United States under the Plan 6 Funding Agreement for the features constructed in that stage, and for the 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and pumping plants (see Article 9.7) to determine the net amount of each function assigned to the Contractor (Operation 4, Exhibit "A"). The Contractor's repayment obligation shall be the summation of the net amount for each function.

(c) Once the Contractor's estimated or final repayment obligation has been determined by the Contracting Officer, the obligation shall be allocated to each construction stage based on the ratio obtained by dividing the allocable cost of each construction stage by the allocable cost of the project. Each construction stage will have a separate 50-year repayment period. The repayment obligation for each stage will be divided into interest-bearing and interest-free components. The interest-free component shall be the amount allocable to irrigation purposes for the stage. The interest-bearing component will be the amount obtained by subtracting the irrigation allocation for the stage from the obligation for the stage. The principal payments for each stage shall be determined by applying the percentages in Subarticle 9.3(f) to the repayment obligation for each stage. The total payment for each stage for any year shall be equal to the principal payment plus interest at the rate of 3.342 percent

per annum on the unpaid interest-bearing component of the repayment obligation for each stage. For the water supply system, the portion of each principal payment which is made by the Contractor from irrigation revenues received by the Contractor each year will be used by the United States to reduce the interest-free obligation. The remaining portion of the principal payments made by the Contractor each year for the water supply system will be used by the United States to reduce the interest-bearing obligation, and once the interest-bearing obligation has been retired, the entire principal payment made by the Contractor will be applied by the United States toward the interest-free obligation. For the other construction stages, the entire principal payment made by the Contractor each year for such stages will be applied by the United States to reduce the interest-bearing obligation first, and once such obligation has been retired, to reduce the interest-free obligation.

(d) At 7-year intervals following the determination of the Contractor's repayment obligation for the water supply system, or at more frequent intervals if it becomes apparent to the Contracting Officer that a significant change in water use has or will occur, until such time as the interest-bearing obligation for each construction stage has been repaid, the Contracting Officer will re-estimate the proportions of total water deliveries to irrigation and M&I water use over the 50-year repayment period for each stage. At such intervals, the Contracting Officer will adjust the original interest-bearing and interest-free allocation for each stage based on the new estimates and recalculate all preceding interest payments. Differences between amounts owed and amounts paid by the Contractor shall be adjusted by the Contracting Officer, who shall apply a credit against the

Contractor's next payment due or notify the Contractor of the additional amount due, as the case may be. All such adjustments shall include interest at the rate of 3.342 percent per annum (compounded annually). Any additional payments required from the Contractor shall be made within 12 months of the Contractor's receipt of a statement from the Contracting Officer therefor. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

(e) The Contracting Officer will notify the Contractor of (i) its estimated repayment obligation when construction of the first construction stage is substantially complete and upon completion of each subsequent construction stage, and (ii) the actual repayment obligation when the final construction stage has been completed, as determined by the Contracting Officer. In the event that the project ultimately consists only of the water supply system, New Waddell Dam, and Modified Roosevelt Dam, the Contractor's actual repayment obligation shall be limited to $2.0 billion. If prior to completion of construction of such features the Contracting Officer determines that the Contractor's repayment obligation for such features will exceed $2.0 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation. If construction of any other construction stage will result in an increase in the Contractor's repayment obligation by an amount equal to or less than the respective amount identified in Exhibit "B," which is attached hereto and made part of this contract, the Contractor's repayment ceiling may, after consultation with the Contractor, be increased by the

Contracting Officer by an amount equal to or less than the respective amount identified in Exhibit "B" by written notice thereof from the Contracting Officer to the Contractor. If construction of such other construction stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B," the Contracting Officer shall consult with the Contractor and the Contractor and the Contracting Officer shall agree upon one of the following courses of action prior to initiation of construction of such construction stage: (1) that additional repayment ceiling be made available from other construction stages, in which event the Contractor's repayment ceiling will be increased to the agreed-to amount by written notice from the Contracting Officer to the Contractor; or (2) that this contract be renegotiated to increase the Contractor's repayment ceiling; Provided, That these courses of action shall also apply in the event that, prior to completion of construction of such stage, the Contracting Officer determines that the construction of such stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B."

(f) Annual percentages of the repayment obligation for each construction stage shall be those set out in the following schedule or any revision thereof mutually agreed upon:

Repayment Year	Percent of Repayment Obligation (Annual)
1-7	1.0
8-14	1.3
15-21	1.6
22-28	2.0
29-35	2.6
36-42	2.7
43-49	2.7
50	2.7

(g) In the event that the Secretary contracts for delivery of non-project water under the provisions of Article 10.1, capital charges associated with such delivery shall be calculated, charged, and utilized in the same manner as capital charges deposited in the Development Fund pursuant to Article 8.18.

9.4 Payment of Contractor's Construction Cost Repayment Obligation.

(a) The Contractor shall make annual payments to the United States, to be credited to the Development Fund, which shall be sufficient, when combined with accruals from the other sources described in Section 403(f) of the Basin Project Act, the Hoover Power Plant Act of 1984, and other miscellaneous revenues, including but not limited to net wheeling charges, to effect repayment of the repayment obligation for each construction stage within a period of not more than 50 years beginning with the year following substantial completion of each construction stage. The Contractor's first payment shall be due on or before January 15 of the year following the year in which the Secretary announces the substantial completion of each construction stage. Annual payments thereafter shall be due on or before January 15 of each following year.

(b) The Contractor agrees to make annual payments calculated by the Secretary as follows:

(i) Calculate the annual principal payments required by the schedule in Subarticle 9.3(f) or any revision thereof for each construction stage.

(ii) Add to (i) the annual interest, at 3.342 percent, on the unpaid balance of the interest-bearing

allocation for each construction stage.

(iii) Determine the total amount of all interest and principal payments due for all construction stages.

(iv) Subtract therefrom the revenues estimated to be available from the Development Fund anticipating a zero balance at the end of each year in the Development Fund.

(v) Make adjustments for differences between estimated and actual revenues for the preceding year.

(c) On or before each December 15, beginning with December 15 of the year in which the Secretary notifies the Contractor of the substantial completion of the first construction stage, the Secretary will notify the Contractor of the amount of the annual payment due on the following January 15, which has been determined by the Secretary on the basis of the aforesaid calculation.

(d) The Contractor may make additional payments on the repayment obligation at any time subject to such terms and conditions as may be agreed upon by the Contractor and the Contracting Officer; Provided, however, That all interest due is paid at the same time, whereupon appropriate adjustments in the schedule of future payments will be made by the Secretary, who shall as promptly as possible give the Contractor written notice of the adjusted repayment schedule.

(e) It is understood and agreed that the Contractor shall be obligated for the payments set forth in Subarticle 9.4(a) hereof and that regardless of the delinquency or default in payment of any charges

due to the Contractor from any subcontractor, or a diminution in the water supply available to the Contractor, or regardless of any other reason, the Contractor shall complete repayment of each construction stage within a 50-year period beginning in the year following the announcement by the Secretary of substantial completion of such construction stage.

9.5 Commercial Power Rates. The Secretary will, consistent with applicable law, periodically review and provide for appropriate adjustments in the rates established for the sales of power and energy, revenues from which contribute to the Development Fund.

9.6 Other Costs Borne by the Contractor.

(a) In addition to the payments provided for in Article 9.4 hereof, and subject to the provisions of Subarticle 9.6(d) hereof, during such periods as the United States operates and maintains completed construction stages, the Contractor shall make advance payments for OM&R costs incurred by the United States. The United States will furnish the Contractor with an estimate in writing at least 6 months prior to substantial completion of construction of the water supply system, of the OM&R cost due from the Contractor to the end of the then current year, together with an estimate of such cost for the calendar year immediately following. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer, the Contractor shall advance to the United States the payments for the estimated OM&R cost to the end of the then current year and without further notice or demand shall on December 15 of the then current year and on June 15 of the following year advance to the United States in equal semiannual installments the Contractor's share of the estimated cost, including supervision and

administrative expense for the OM&R of the water supply system. Advance payments shall be made in subsequent years by the Contractor to the United States on the basis of estimates to be furnished by the United States on or before November 15 preceding said subsequent year and the advances of said payments shall be due and payable in equal semiannual payments on the following December 15 and June 15. Said OM&R costs are the total annual OM&R costs of completed construction stages which are allocated to the irrigation and M&I water supply functions less (i) the costs described in Subarticle 9.6(c) hereof, and (ii) an amount determined by multiplying the total of said annual costs by the ratio obtained by dividing the estimated amount of project water projected to be delivered in the subsequent year to entities other than the Contractor, the subcontractors, and those entities in New Mexico to which project water will be made available from Hooker Dam or suitable alternative, by the total amount of project water estimated to be delivered for use in that year.

(b) Differences between actual OM&R costs and the estimated costs shall be determined by the Contracting Officer and shall be adjusted in next succeeding estimates; Provided, however, That if in the opinion of the Contracting Officer the amounts advanced by the Contractor for any year are likely to be insufficient to pay the above-mentioned OM&R costs during such year, additional and sufficient sums of money shall be paid forthwith by the Contractor to the United States upon notice thereof and demand therefor by the Contracting Officer; Provided, further, That the United States will give Contractor reasonable notice in advance of any such deficiency.

(c) The Contractor's obligation to pay said OM&R costs

of completed construction stages will be reduced to the extent that project water is made available for use in New Mexico following completion of Hooker Dam or suitable alternative. Said reduction will be in the proportion which the quantity of project water projected to be delivered to water users in Arizona, in exchange for Gila River system waters delivered to water users in New Mexico from or by means of project works, bears to the total quantity of Colorado River water projected to be delivered to the project that year.

(d) In the event that responsibility for OM&R of project facilities is transferred to and assumed by the Contractor, the Contractor shall be relieved of the obligation to make OM&R payments associated with such facilities under Subarticle 9.6(a) of this contract. In that event, the United States shall pay or provide for payment of OM&R costs associated with delivery of water to entities other than the Contractor and the subcontractors. Such costs shall be computed in accordance with Subarticle 9.6(a) of this contract. If the Contractor does not receive payment in advance for such costs, the Contractor shall have no obligation to deliver such water.

(e) During the Hoover Dam cost-repayment period, the Contractor shall pay to the United States the sum of $0.25 for each acre-foot of water pumped from Lake Havasu for miscellaneous and M&I water purposes as determined by the Contracting Officer. The quantity of water pumped for such purposes will be determined by the Contracting Officer at the end of each calendar year and the Contractor notified of the amount due by March 1 of each subsequent year. Payment shall be due on May 1 following notification. Said payment shall be credited to the Colorado River Dam Fund

established by Section 2 of the Boulder Canyon Project Act.

9.7 Repayment of Costs of Excess Capacity in Granite Reef Aqueduct. The costs of providing any capacity in the Granite Reef Aqueduct and pumping plants in excess of 2,500 cubic feet per second shall be repaid by Contractor from funds available to Arizona pursuant to the provisions of Section 403(f) of the Basin Project Act, or by funds from sources other than the Development Fund.

9.8 Ad Valorem Taxes, Assessments, Tolls, and Other Charges. Within the legal limits available to it, the Contractor shall levy ad valorem taxes upon the taxable property within the service area of the Contractor at rates determined necessary by the Contractor to raise funds which, together with the revenues from the sale of water and such financial assistance from the Development Fund as the Secretary determines is available therefor, are sufficient to meet the obligations of the Contractor to make in full all payments to the United States on or before the date such payments become due and to meet its other obligations under this contract.

9.9 Continuation of Payments After Project Payout. Following payment to the United States of the Contractor's final payment for the last construction stage, the Contractor shall continue to make annual payments to the United States to be credited to the Development Fund in amounts equal to the average annual principal payment for the project during the overall repayment period. In the event that no augmentation project, as contemplated in the Basin Project Act, has been authorized or is under active consideration by the Congress at the time project construction costs have been repaid in full, payments under this formula will be not required; Provided, however, That payments will commence after repayment of the

project costs pursuant to the formula, or any adjustment thereof agreed to by the parties, at such time as an augmentation project is authorized by Congress and the costs thereof allocated to the Contractor are determined by the Secretary.

9.10 Defaults.

(a) The Contractor shall pay a penalty on payments, installments or charges which become delinquent, computed at the rate of 1 percent per month on the amount of such delinquent payments, installments, or charges from and after the date when the same become due until paid.

(b) No water shall be furnished to the Contractor during any period in which the Contractor may be in arrears more than 12 months in the payments to the United States required by Article 9.4 hereof.

(c) All rights of action for breach of this contract are reserved to the United States as provided by Federal law.

10. GENERAL PROVISIONS

10.1 Other Contracts. The Secretary reserves the right to contract directly with other water using entities concerning water supply through project facilities. In the event this occurs, the provisions of Article 8.17 hereof shall be applicable.

10.2 Title to Project Works. Title to all water supply system works and all project facilities constructed pursuant to the Basin Project Act and this contract shall be and remain in the United States until otherwise provided by Congress.

10.3 Reserve Funds.

(a) (1) Commencing with notice of transfer of OM&R for the Granite Reef Aqueduct, including the Havasu Pumping Plant, the Contractor

shall accumulate and maintain an emergency OM&R reserve fund, which the Contractor shall keep available to meet costs incurred during periods of interruption of water service.

(ii) The Contractor shall accumulate the reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $400,000 in any year in which the fund balance is less than $4,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for such purposes as those identified in Subarticle 10.3(a)(iv) hereof. Such annual deposits and the accumulation of interest and dividends to the reserve fund shall continue until $4,000,000 is accumulated. Interest and dividends accruing to fund balances shall be added to the fund in any year when the fund balance is greater than $4,000,000; Provided, That in no event shall the fund be increased to an amount greater than the actual amount of fixed OM&R costs for the preceding year as mutually determined by the Contractor and the Contracting Officer. Any balance in the fund in excess of the amount of fixed OM&R costs for the previous year shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted in consideration of the risk and uncertainty stemming from the size and complexity of the project, the size of the annual OM&R budget, additions to, deletions from, or changes in project works, or OM&R costs not

contemplated when this contract was executed.

(iv) The Contractor may make expenditures from such reserve fund only for meeting unforeseen and extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs (in situations where recurrence of severe operation and maintenance problems can be avoided or eliminated). Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) During any period in which any of the project works are operated and maintained by the United States, the reserve fund shall be available for like use by the United States.

(vi) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement indicating the principal and accumulated interest in the emergency OM&R reserve fund as of December 31 of the preceding year.

(b) (i) No later than 1 year following the Contractor's last construction advance under the Plan 6 Funding Agreement, the Contractor shall accumulate and maintain a repayment reserve fund to help assure payments to the United States under this contract.

(ii) The Contractor shall accumulate such reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $4,000,000 in any year in which the fund balance is less than $40,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for the

purpose for which it was established. Such annual deposits and the accumulation of interest to the reserve fund shall continue until $40,000,000 is accumulated. Any balance in the fund in excess of $40,000,000 shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted.

(iv) Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement of the principal and accumulated interest in the repayment reserve fund as of December 31 of the preceding year.

10.4 Recreational Use of Water Facilities.

(a) The enhancement of recreational opportunities in connection with the project works authorized pursuant to Title III of the Basin Project Act shall be in accordance with the provisions of the Federal Water Project Recreation Act, 79 Stat. 213, dated July 9, 1965, except as provided in Subarticle 10.4(b) hereof.

(b) Recreational development at Orme Dam and Reservoir shall be governed by the provisions of Section 302(d) of the Basin Project Act.

10.5 Confirmation of Contract.

(a) The Contractor, after the execution of this contract,

shall promptly seek to secure a decree of a court of competent jurisdiction of the State of Arizona confirming the execution of this contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor. This contract shall not be binding on the United States or the Contractor until such final decree has been entered.

(b) This contract shall be indivisible for purposes of validation and shall not be binding on the United States or the Contractor unless validated pursuant to the provisions of Subarticle 10.5(a) hereof in each and all of its terms and conditions.

10.6 Rules, Regulations, and Determinations.

(a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Reclamation Law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation Law.

(b) The Contracting Officer, after an opportunity has been offered to the Contractor for consultation, shall have the right to make rules, regulations, and determinations consistent with the provisions of this contract, the laws of the United States and the State of Arizona, including, without limitation, rules, regulations, and determinations relative to maximizing project benefits from pumping from Lake Havasu, the rate and schedule of pumping therefrom and the rate and schedule of pumping at the Granite Reef pumping plants, to add to or modify said rules, regulations, and determinations as may be deemed proper and necessary to

carry out this contract, and to supply necessary details of its administration which are not covered by ~~express~~ provisions of this contract. The Contractor and each subcontractor shall observe such rules, regulations, and determinations and each subcontract shall so provide.

(c) Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor and shall be conclusive upon the parties.

10.7 Books, Records, and Reports. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: the Contractor's financial transactions, water supply data, project operation, maintenance and replacement logs, project land and right-of-way use agreements, and other matters specifically relating to this contract that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

10.8 Notices. Any notice, demand, or request authorized or

required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States, when mailed, postage prepaid, or delivered to the General Manager of the Contractor, 23636 North 7th Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

10.9 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

10.10 Changes in Contractor's Organization. While this contract is in effect, no change shall be made in the Contractor's organization, by exclusion of lands, by dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written consent; Provided, however, That approval is hereby given to the inclusion of other counties as part of Contractor's service area, except, however, that the United States shall not be required, under this contract, to construct project facilities to serve lands within said additional counties.

10.11 Assignment Limited--Successors and Assigns Obligated. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this

contract or any part or interest therein shall be valid until approved in writing by the Contracting Officer.

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

10.13 Equal Opportunity. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment

without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Contracting Officer, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

10.14 Compliance With Civil Rights Laws and Regulations.

(a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures

necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

10.15 Officials Not to Benefit. No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

11. STATUS OF DECEMBER 15, 1972 CONTRACT

Upon judicial confirmation of this contract, the December 15, 1972 contract entitled "Contract Between the United States and the Central Arizona Water Conservation District For Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), shall be superseded and replaced by this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
Assistant Secretary-Water and Science
Department of the Interior

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

ATTEST:

_____
Secretary

By _____
President

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 1 SUBALLOCATION OF CONTRACTOR'S WATER SUPPLY COSTS TO CONSTRUCTION STAGES:

Construction Stage	Allocable Cost ($M)	Percentage	Water Supply Cost ($M)
Water Supply System	1,500	71%	1,280
New Waddell	300	14%	256
Cliff Alternative	100	5%	85
Tucson Term. Storage	60	3%	51
Hooker Alternative	50	2%	43
Buttes	100	5%	85
Total	2,110	100%	1,800

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 2 SUBALLOCATION OF WATER SUPPLY COST:

Construction Stage	Allocable Cost ($M) Construction	IDC	Water Distribution (%) Irrigation	M&I
Water Supply System	1,280	200	58%	42%
New Waddell	256	40	54%	46%
Cliff Alternative	85	10	54%	46%
Tucson Term. Storage	51	10	53%	47%
Hooker Alternative	43	10	50%	50%
Buttes	85	10	50%	50%
Total	1,800	280	100%	

	Construction Cost Distribution ($M) Irrigation	M&I	IDC Cost Distribution ($M) Irrigation	M&I
Water Supply System	742	538	116	84
New Waddell	138	118	22	18
Cliff Alternative	46	39	5	5
Tucson Term. Storage	27	24	5	5
Hooker Alternative	21	21	5	5
Buttes	43	43	5	5
Total	1,017	783	158	122

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 3 DETERMINATION OF TOTAL WATER SUPPLY COST:

	Total Cost Distribution ($M)		
	Irrigation	M&I	Total
Water Supply System	742	622	1,364
New Waddell	138	136	274
Cliff Alternative	46	44	90
Tucson Term. Storage	27	29	56
Hooker Alternative	21	26	47
Buttes	43	48	91
Total	1,017	905	1,922

Irrigation = Irrigation construction cost
M&I = M&I construction cost + M&I IDC

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 4 ADJUSTMENTS TO ALLOCATED COST:

	Irrigation Cost ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)	M&I ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)
Water Supply System	742	-4		33	622	10		32
New Waddell	138		-45		136		-135	
Cliff Alternative	46				44		-30	
Tucson Term. Storage	27				29			
Hooker Alternative	21				26			
Buttes	43				48			
Total	1,017	-4	-45	33	905	10	-165	32

	Power Cost ($M)	Interim Operations ($M)	Total ($M)
Water Supply System	328	-100	1,663
New Waddell	61		155
Cliff Alternative	20		80
Tucson Term. Storage	12		68
Hooker Alternative	9		56
Buttes	19		110
Total	449	-100	2,132

EXHIBIT "B"

CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD) REPAYMENT CEILING (Billions of Dollars)

		Remaining Potential Stages				
	Water Supply System, New Waddell, and modified Roosevelt Dams	Tucson Terminal Storage	Cliff Dam Alternative	Hooker Dam Alternative	Buttes Dam	Total
Amount allocable to CAWCD repayment ceiling based on October 1988 prices.	$1.681	$.058	$.060	$.035	$.100	$.253
Inflation (4%) on features remaining to be completed, plus an amount for unforeseen contingencies (.82 of the inflation component)[1]	.100	.032	.035	.047	.133	$.247
Additional costs which could be allocated to CAWCD if the Gila River Indian Community does not take CAP water	.259	----	----	----	----	----
	----	----	----	----	----	----
Total	$2.040	$.090	$.095	$.082	$.233	$.500
Rounded	$2.000					$.500

[1] Inflation calculations based on the assumption that Tucson terminal storage and the Cliff Dam alternative are completed in 1995, and that the Hooker Dam alternative and Buttes Dam are completed in 2002.

Exhibit "B"

Assignment among RWCD, CAWCD and The United States
(See Exhibit "12.3." to Agreement)

EXHIBIT "12.3"

RWCD ASSIGNMENT TO CITIES

ASSIGNMENT

THIS AGREEMENT, dated as of February 12, 1988, is made and entered into by and among the United States of America acting through the Secretary of the Interior, the Central Arizona Water Conservation District, the Roosevelt Water Conservation District, the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa and Phoenix, and the Arizona Town of Gilbert.

R E C I T A L S

A. The United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members.

B. The foregoing settlement agreement requires the assignment by the Roosevelt Water Conservation District to the Cities and Town participating in the settlement of a portion of the agricultural water supply available to Roosevelt Water Conservation District from the Central Arizona Project.

C. The settlement agreement further requires the Secretary of the Interior, in certain events, to make available to the Cities and Town participating in the settlement a portion of the

agricultural water supply otherwise available from the Central Arizona Project.

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix and the Town of Gilbert.

(b) "City" shall mean any one of the Cities.

(c) "Contractor" shall mean the Central Arizona Water Conservation District.

(d) "Repayment Contract" shall mean the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 15, 1972 (Contract No. 14-06-W-245), and any amendment or revision thereof.

(e) "Secretary" and "Contracting Officer" shall mean the Secretary of the Interior or his duly authorized representative.

(f) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America; the Salt River Pima-Maricopa Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District.

(g) "Subcontract" shall mean the Subcontract among the United States, the Central Arizona Water Conservation District, and the Roosevelt Water Conservation District, Providing for Water Service, Central Arizona Project, dated [to be supplied] (Contract No. [to be supplied]).

(h) "Subcontractor" shall mean the Roosevelt Water Conservation District.

All other terms used in this Agreement which are defined in the Repayment Contract or the Subcontract shall have the meanings ascribed to them in the Repayment Contract and the Subcontract.

2. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, and for each Year thereafter until the term of the Subcontract expires, Subcontractor hereby assigns to the Cities an amount of Project Water, to be taken from Subcontractor's annual entitlement to Agricultural Water under Article 4.13 of the Subcontract, equal to the lesser of (a) 5,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, or (b) such amount of Project Water as is available from Subcontractor's annual entitlement to Agricultural Water after first providing for delivery to the Subcontractor, at the Subcontractor's Project turnout, of 8,000 acre-feet of Agricultural Water.

3. (a) If and when, as a result of a reduction in the acreage of eligible lands in Subcontractor's service area,

Subcontractor's entitlement to Agricultural Water under Article 4.13 of its Subcontract is insufficient to provide for the delivery to the Cities at the Cities' Project turnouts of a total amount of 3,000 acre-feet of Project Water (after first providing for the delivery of Subcontractor's entitlement to Agricultural Water as determined in accordance with subparagraph (b) of this Paragraph) in a Year in which the total supply of Agricultural Water available for delivery from the Project is 450,000 acre-feet or more, the Secretary shall thereafter make available for delivery to the Cities from the total supply of Agricultural Water otherwise available for delivery from the Project in each Year an amount of Project Water equal to the difference between (i) 3,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, and (ii) the amount of Project Water available to the Cities as a result of the assignment made in Paragraph 2 of this Agreement.

(b) If and when the provisions of subparagraph (a) of this Paragraph are implemented, Subcontractor's entitlement (i) to 8,000 acre-feet of Agricultural Water under subparagraph (b) of Paragraph 2 of this Agreement or (ii) to such lesser amount of Agricultural Water as may be determined in conformance with the provisions contained in subparagraph (d) of Paragraph 12 of this Agreement shall be subject to reduction in an amount equal to Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract multiplied by the amount of Agricultural Water made available by the Secretary for delivery to the Cities pursuant to subparagraph (a) of this Paragraph.

(c) Attached hereto as Appendix A are examples of how Paragraphs 2 and 3 of this Agreement are intended to operate under various conditions.

4. (a) Project Water made available to the Cities pursuant to Paragraph 2 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	972 acre-feet per Year;
City of Glendale	=	682 acre-feet per Year;
City of Scottsdale	=	23 acre-feet per Year;
City of Tempe	=	23 acre-feet per Year;
City of Mesa	=	627 acre-feet per Year;
City of Phoenix	=	1,136 acre-feet per Year;
Town of Gilbert	=	1,537 acre-feet per Year;
TOTAL	=	5,000 acre-feet per Year.

(b) Project Water made available to the Cities pursuant to Paragraph 3 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	583 acre-feet per Year;
City of Glendale	=	409 acre-feet per Year;
City of Scottsdale	=	14 acre-feet per Year;
City of Tempe	=	14 acre-feet per Year;
City of Mesa	=	376 acre-feet per Year;
City of Phoenix	=	682 acre-feet per Year;
Town of Gilbert	=	922 acre-feet per Year;
TOTAL	=	3,000 acre-feet per Year.

(c) Prior to the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted by mutual agreement of such Cities. On and after the enforceability date of the Settlement Agreement, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted only by mutual agreement of such Cities, the Contractor, and the United States.

(d) In the event this Agreement shall become effective and any City ("designating City") entitled to receive water hereunder is unable to take delivery of such water by virtue of not having constructed a treatment plant capable of taking deliveries of water from the Central Arizona Project, the designating City shall in writing designate one or more Cities which are also parties to this Agreement to act as the interim recipients ("interim recipient") of the designating City's water, and water made available to the designating City under this Agreement shall be delivered by Contractor to the interim recipient(s) until such time as the designating City's treatment plant is completed and ready to take delivery of and treat deliveries of water from the Central Arizona Project. The designating City shall notify Contractor and Subcontractor of any such designation and shall also provide Contractor and Subcontractor with copies of any agreement between the designating City and the interim recipient(s). Any

such agreement shall not be inconsistent with any provisions of the Repayment Contract, the Subcontract, or this Agreement.

5. Notwithstanding anything in the Repayment Contract or the Subcontract to the contrary, Project Water made available to the Cities pursuant to this Agreement may be used for any M&I Water uses including but not limited to ground water recharge.

6. Notwithstanding any schedule or other instruction to the contrary, Project Water made available to the Cities pursuant to this Agreement, including any water delivered under a designation agreement entered into pursuant to Paragraph 4(d) hereof, shall be accounted for and treated by the Contractor and the Contracting Officer as having been scheduled for delivery by the Cities, and delivered to the Cities, prior to the delivery of any portion of the Cities' entitlements to Project M&I Water under the Cities' M&I Water service subcontracts (City of Chandler, Contract No. 5-07-30-W0070; City of Glendale, Contract No. 5-07-30-W0062; City of Scottsdale, Contract No. 5-07-30-W0063; City of Tempe, Contract No. 5-07-30-W0061; City of Mesa, Contract No. 5-07-30-W0060; City of Phoenix, Contract No. 5-07-30-W0059; Town of Gilbert, Contract No. [to be supplied]), prior to the delivery of any portion of the Cities' entitlements to under the Cities' Project Water Lease Agreements (Exhibits "3.m.1" through "3.m.7" of the Settlement Agreement), and prior to the delivery of any portion of the Cities' entitlements to "Colorado River water" under and as defined in the Cities' River Water Exchange Contracts (Exhibits "3.h.1" through "3.h.7" of the Settlement Agreement).

7. Except as otherwise provided in Paragraph 11 hereof, the Cities shall make payment for Project Water made available to the Cities pursuant to this Agreement in accordance with the terms and conditions of contracts to be entered into among the United States, the Contractor, and each of the Cities, the forms of which are attached as Exhibits "3.h.1" through "3.h.7" to the Settlement Agreement.

8. Except as provided in Paragraph 10 of this Agreement, nothing in this Agreement shall relieve the Subcontractor of its obligation to make the payments required in the Subcontract.

9. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract, the costs associated with the delivery of Project Water to the Cities pursuant to this Agreement shall be nonreimbursable, and such costs shall be excluded from the Contractor's repayment obligation.

10. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the Subcontractor's obligation to pay Agricultural Water service capital charges pursuant to Subarticle 5.2(a) of the Subcontract shall be reduced in each Year by an amount equal to $2.00 per acre-foot, or such amount as may be determined by the Contracting Officer based on payment capacity determinations provided for in the Repayment Contract, multiplied by the total amount of Project Water assigned by the Subcontractor

to the Cities pursuant to Paragraph 2 of this Agreement and scheduled for delivery by the Cities in such Year.

11. (a) Each City agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any operation, maintenance, and replacement costs associated with Project Water made available for delivery to the City pursuant to Paragraph 2 of this Agreement. Each City further agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any Agricultural Water service capital charges associated with any Project Water assigned by the Subcontractor to the City pursuant to Paragraph 2 of this Agreement. The liability of each City under this Paragraph 11(a) shall be its sole and separate obligation, and shall not be an obligation joint and several with any other City or Cities.

(b) In the event any City shall default and fail to indemnify Contractor or Subcontractor as required in Paragraph 11(a) hereof, then such City's entitlement to water under this Agreement shall be forfeit and such entitlement shall be redistributed pro rata to each of the other Cities which are parties to this Agreement. The redistribution of water shall be effected by means of a notice from Subcontractor and Contractor, if either has not been indemnified, to the defaulting City and to the other Cities which are parties to this Agreement, and such redistribution shall be effective on the thirty-fifth day after the notice is given. Within ten days of receiving the notice of re-distribution, each City other than the defaulting City shall pay to

Subcontractor or Contractor, as the case may be, its share of the amount the defaulting City shall have failed to pay, which share shall be in the proportion which the amount of water redistributed to such City bears to the total amount of water redistributed. In the event any City to which water is redistributed shall fail to make the payment hereby required to be made within the time herein prescribed, Subcontractor or Contractor, as the case may be, shall be free to redistribute such City's entitlement to redistributed water to any other City which makes such payment and which is also a party to this Agreement.

12. (a) Subcontractor's entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be 5.98 percent of the total supply of Agricultural Water available for delivery from the Project (subject to reduction by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer) unless, prior to the issuance by the Secretary of Notice of Completion of the Water Supply System, Subcontractor notifies the Contractor and the Contracting Officer that it wishes to reduce its entitlement to a lesser percentage of the total Agricultural Water supply. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement under Subarticle 4.13(a) of the Subcontract shall be as stated in the notice from the Subcontractor to the Contractor and the Contracting Officer.

(b) Notwithstanding the foregoing, the Contractor and the Contracting Officer may at any time prior to the issuance of

such Notice of Completion require the Subcontractor to specify its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract by notifying the Subcontractor that it must specify such entitlement within six months of the date that the Contractor and the Contracting Officer issue such notice. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be as specified by the Subcontractor in response to the notice issued by the Contractor and the Contracting Officer. In the event the Subcontractor fails to make such specification within the time required, Subcontractor's entitlement shall be fixed at 5.98 percent of the total Agricultural Water supply (subject to adjustment by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer).

(c) At the time the Subcontractor notifies the Contractor and the Contracting Officer of its percentage entitlement pursuant to subparagraph (a) of this Paragraph, or at the time the Subcontractor specifies its entitlement pursuant to subparagraph (b) of this Paragraph, Subcontractor may relinquish:

(i) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(a) of the Subcontract to be made available to the Subcontractor as a result of deductions made in other subcontractors' entitlements to Agricultural Water to reflect removal of eligible lands from agricultural use; and

(ii) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(b) of the Subcontract to be made available to the Subcontractor as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available;

Provided, however, that the Subcontractor shall relinquish at least 5,000 acre-feet, or the percentage of the projected Agricultural Water supply that most closely approximates 5,000 acre-feet, of any additional Agricultural Water entitlement to which the Subcontractor would be entitled under Subarticle 4.13(b) of the Subcontract as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available.

(d) Subject to the requirements and limitations of this Paragraph 12, Subcontractor may select its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract based upon its own evaluation of potential Agricultural Water supplies and its own requirements; Provided, however, that said Subcontractor's entitlement to Agricultural Water shall in no event exceed the lesser of 5.98 percent or the percentage entitlement determined by dividing the number of acres of eligible lands in the Subcontractor's service area by the total number of acres of eligible lands in the service areas of all subcontractors of Agricultural Water, as determined by the Contracting Officer.

13. Except as provided in this Agreement, all terms and conditions of the Subcontract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

Attest:

_____
Secretary

CENTRAL ARIZONA WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: George W. Barr
Title: President

Attest:

_____
Secretary

ROOSEVELT WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: Mark W. Dobson
Title: President

Attest:

_____
Clerk

Approved as to Form:

_____
City Attorney

CITY OF PHOENIX, a Municipal corporation, MARVIN A. ANDREWS, City Manager

By _____

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF SCOTTSDALE, an Arizona municipal corporation

By
Name: Herbert R. Drinkwater
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF GLENDALE, an Arizona municipal corporation

By
Name: George R. Renner
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF MESA, an Arizona municipal corporation

By
Name:
Title:

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF TEMPE, an Arizona municipal corporation

By
Name: Harry E. Mitchell
Title: Mayor

. . .

Attest:

Clerk, Acting

Approved as to Form:

City Attorney

CITY OF CHANDLER, an Arizona municipal corporation

By
Name: Richard Dugan
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

TOWN OF GILBERT, an Arizona municipal corporation

By
Name: Steve M. Berman
Title:

. . .

APPENDIX A

The following are five examples of how Paragraphs 2 and 3 of the Assignment are intended to operate under varying water supply conditions and assuming varying entitlements to CAP Agricultural Water for Roosevelt Water Conservation District ("RWCD") under Subarticle 4.13(a) of RWCD's CAP Agricultural Subcontract.

EXAMPLE 1

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 1,000,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 5.98%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 59,800 AF.

(5.98% X 1,000,000 AF - 59,800 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 59,800 AF - 8,000 AF = 51,800 AF

5. RWCD's balance = 54,800 AF.

EXAMPLE 2

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 13,005 AF.

(2.89% X 450,000 AF = 13,005 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 13,005 AF - 8,000 AF = 5,005 AF.

5. RWCD's balance = 8,005 AF.

EXAMPLE 3

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,890 AF.

(2.89% X 100,000 AF = 2,890 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment = 0 (because RWCD's entitlement is sufficient to provide for delivery to the Cities of at least 3,000 AF in any year in which the total supply is 450,000 AF or more -- See Example 2).

EXAMPLE 4

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 10,980 AF.

(2.44% X 450,000 AF - 10,980 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

   (a) 5,000 AF, or

   (b) 10,980 AF - 8,000 AF = 2,980 AF.

5. Cities' entitlement under Paragraph 3 of the Assignment =

   (a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area:

   Cities' entitlement = 3,000 AF - 2,980 AF = 20 AF

   CITIES' TOTAL = 3,000 AF

   (b) IF 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0

   CITIES' TOTAL = 2,980 AF

EXAMPLE 5

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,440 AF.

(2.44% X 100,000 AF = 2,440 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment:

(a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement = 3,000 AF.

(b) RWCD's contribution = 2.44% X 3,000 AF = 73 AF.

(c) RWCD's net entitlement = 2,440 AF - 73 AF = 2,367 AF.

BUT

(d) If 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0.

Exhibit "C"

Total CAP Water Available to M&I:	443,067	A
SRPMIC Agreement Water Calculations		
• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	2,088	
Total Agreement Water Credit:	19,912	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	462,979	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	69.64%	

CAP Water Available to M&I: 443,067 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	**Delivery Without Agreement (AF)**	**Delivery With Agreement* (AF)**
Avondale	4,099	0.64%	0.00%	0	**2,833**	**2,855**
Peoria	17,849	2.79%	0.00%	0	**12,338**	**12,430**
Glendale	14,083	2.20%	13.64%	3,545	**9,735**	**12,276**
Phoenix	113,882	17.83%	22.73%	5,909	**78,721**	**83,422**
Scottsdale	19,702	3.08%	0.45%	118	**13,619**	**13,803**
Chaparral City	6,978	1.09%	0.00%	0	**4,824**	**4,859**
Prescott	7,127	1.12%	0.00%	0	**4,927**	**4,963**
Payson	4,995	0.78%	0.00%	0	**3,453**	**3,478**
Tempe	4,315	0.68%	0.45%	118	**2,983**	**3,087**
Mesa	29,527	4.62%	12.55%	3,262	**20,411**	**22,834**
Apache Jct	6,000	0.94%	0.00%	0	**4,147**	**4,178**
Chandler	3,668	0.57%	19.45%	5,056	**2,536**	**6,075**
Gilbert	7,235	1.13%	30.74%	7,991	**5,001**	**10,604**
Casa Grande	8,884	1.39%	0.00%	0	**6,141**	**6,187**
Tucson	148,420	23.23%	0.00%	0	**102,595**	**103,359**
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where

X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

Total CAP Water Available to M&I:	218,338	A
SRPMIC Agreement Water Calculations		
• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	3,496	
Total Agreement Water Credit:	18,504	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	236,842	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	35.62%	

CAP Water Available to M&I: 218,338 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	**Delivery Without Agreement (AF)**	**Delivery With Agreement* (AF)**
Avondale	4,099	0.64%	0.00%	0	**1,385**	**1,460**
Peoria	17,849	2.79%	0.00%	0	**6,031**	**6,359**
Glendale	14,083	2.20%	13.64%	3,545	**4,759**	**6,280**
Phoenix	113,882	17.83%	22.73%	5,909	**38,481**	**42,675**
Scottsdale	19,702	3.08%	0.45%	118	**6,657**	**7,061**
Chaparral City	6,978	1.09%	0.00%	0	**2,358**	**2,486**
Prescott	7,127	1.12%	0.00%	0	**2,408**	**2,539**
Payson	4,995	0.78%	0.00%	0	**1,688**	**1,779**
Tempe	4,315	0.68%	0.45%	118	**1,458**	**1,579**
Mesa	29,527	4.62%	12.55%	3,262	**9,977**	**11,681**
Apache Jct	6,000	0.94%	0.00%	0	**2,027**	**2,137**
Chandler	3,668	0.57%	19.45%	5,056	**1,239**	**3,108**
Gilbert	7,235	1.13%	30.74%	7,991	**2,445**	**5,424**
Casa Grande	8,884	1.39%	0.00%	0	**3,002**	**3,165**
Tucson	148,420	23.23%	0.00%	0	**50,151**	**52,874**
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

EXHIBIT "3.h.7."

River Water Exchange Contract
Town of Gilbert, Arizona

Exhibit "3.h.7"
RIVER WATER EXCHANGE CONTRACT
Town of Gilbert, Arizona

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Exhibit "3.h.7"
RIVER WATER EXCHANGE CONTRACT
Town of Gilbert, Arizona

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE TOWN OF GILBERT, ARIZONA,
PROVIDING FOR WATER SERVICE

ARTICLE 1
Preamble

1. THIS CONTRACT, made as of the 12th day of February, 1988, in pursuance of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549, and 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), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, hereinafter referred to collectively as the "Federal Reclamation Laws," and the various authorities and responsibilities of the Secretary of the Interior in relation to Indians and Indian Tribes, as contained in Title 25 U.S.C. and 43 U.S.C. § 1457, among THE UNITED STATES OF AMERICA, acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as "CAWCD," a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the TOWN OF GILBERT, Arizona, hereinafter referred to as the "City," with its principal place of business at 119 North Gilbert Road, Gilbert, Arizona;

WITNESSETH, THAT:

ARTICLE 2
Explanatory Recitals

2. 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., CAWCD 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 CAWCD, shall be a party to contracts that are in conformity with and subsidiary to the master contract; and

WHEREAS, the United States and CAWCD entered into Contract No. 14-06-W-245 dated December 15, 1972, which was amended on

December 1, 1988, hereinafter referred to as the "Repayment Contract," a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, whereby CAWCD agrees to repay to the United States the reimbursable costs of the Central Arizona Project allocated to CAWCD; and

WHEREAS, the City has entered into a water service subcontract with the United States and CAWCD for municipal and industrial water service from water supplies available from the Central Arizona Project, Contract No. [to be supplied]; and

WHEREAS, the United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert, Arizona, and CAWCD have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members, to finally resolve pending litigation on water rights and damage claims, and to seek funding for implementation of the settlement; and

WHEREAS, the United States, acting through the Secretary of the Interior, has both a trust and fiduciary responsibility to make the Salt River Pima-Maricopa Indian reservation a permanent Tribal homeland for the Salt River Pima-Maricopa Indian Community; and

. . .

WHEREAS, as part of the water rights settlement with the Salt River Pima-Maricopa Indian Community, the United States is required to contract with the City for the delivery through Central Arizona Project facilities of not to exceed six thousand seven hundred sixty-two (6,762) acre-feet per year of Colorado River water which was not included in the determination of water supplies available to the Central Arizona Project, plus certain additional amounts of Central Arizona Project water to be made available each year by the Roosevelt Water Conservation District or the Secretary of the Interior from Central Arizona Project water supplies otherwise available for agricultural use;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 3
Definitions

3. For purposes of this Contract:

(a) "Agricultural water" shall mean water made available from the Central Arizona Project for the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than five acres.

(b) "CAWCD's service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties, Arizona, and such other counties as may hereafter become part of the District, . . .

exclusive of any Indian reservation land lying wholly or partly within said Counties.

(c) "Central Arizona Project" or "CAP" or "project" shall mean the project and works authorized by Section 301(a) of the Colorado River Basin Project Act and constructed by the United States pursuant to the provisions of said Act.

(d) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix, and the Town of Gilbert.

(e) "Colorado River water" shall mean that Colorado River mainstream water to be delivered to the City under this Contract which has a Colorado River priority pre-dating September 30, 1968.

(f) "Contracting Officer" shall mean the Secretary or his authorized designee acting on his behalf.

(g) "Distribution works" shall mean those facilities constructed or used for the purpose of distributing water to or within the City's service area after said water has been transported through the water supply system to the City's project turnout(s).

(h) "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be amended or revised.

. . .

(i) "Miscellaneous water" shall mean water made available from the Central Arizona Project, or by exchange for such water, for recreational and fish and wildlife purposes at other than project facilities, and which has a lesser priority of use than agricultural water.

(j) "Municipal and industrial water," hereinafter sometimes referred to as "M&I water," shall mean water made available from the Central Arizona Project other than agricultural water and miscellaneous water.

(k) "Notice of completion" shall mean the notice which the Contracting Officer issues to CAWCD to announce the substantial completion of the water supply system, or of those features of the project which include or comprise the water supply system, or of the entire project if constructed concurrently, thereby initiating payments therefor allocated to CAWCD.

(l) "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

(m) "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

(n) "Assignment Water" shall mean that water to be delivered to the City under this Contract which is made available to the City by the Roosevelt Water Conservation District ("RWCD") or the Secretary of the Interior pursuant to the Assignment, dated as of February 12, 1988, among the United States, CAWCD, . . .

RWCD, and the Cities. A copy of the Assignment is attached hereto as Exhibit "B" and by this reference made a part hereof.

(o) "Project works" shall mean the principal works described in Section 301(a) of the Colorado River Basin Project Act, and appurtenances thereto, or as modified pursuant to the Repayment Contract, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

(p) "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from Colorado River water or Assignment Water as defined herein, but shall not include any water delivered through the project works for ground water recharge purposes.

(q) "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

(r) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, RWCD, the Roosevelt Irrigation District, the Cities, and CAWCD.

(s) "Subcontractor" shall mean any irrigation district, municipality, individual, or any other entity which enters into a water service subcontract with the United States and CAWCD in furtherance of the provisions of the Colorado River Basin Project Act.

(t) "Time of shortage" shall mean a calendar year for which the Secretary determines that a shortage exists pursuant to Section 301(b) of the Colorado River Basin Project Act, such that there is not sufficient water available for delivery from the Central Arizona Project in that year (after reduction in consideration of anticipated losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein) to meet fully the entitlements of Indian contractors and non-Indian municipal and industrial subcontractors of Central Arizona Project water supplies.

(u) "Transferred works" shall mean such features of the project or such facilities of the water supply system as to which OM&R responsibility is transferred from the United States to the Operating Agency.

(v) "Water supply system" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt-Gila, and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

(w) "Year" shall mean the period between January 1 through the next succeeding December 31.

ARTICLE 4
Term

4. This Contract shall become effective upon its execution by the parties hereto and its term shall be perpetual.

ARTICLE 5
Delivery of Water

5. (a) The United States shall obtain rights to 22,000 acre-feet of annual consumptive use of mainstream Colorado River water in Arizona with a contractual priority pre-dating September 30, 1968, and which was not included in the determination of the water supplies available to the Central Arizona Project. The Secretary shall make such Colorado River water available for delivery as provided herein.

(b) Except as provided in Article 8 hereof, commencing with the year in which the Secretary issues notice of completion or the enforceability date of the Settlement Agreement, whichever is later, and for each year thereafter, the City shall be entitled to Colorado River water and Assignment Water in amounts not exceeding the following:

(i) Colorado River water -- 6,762 acre-feet; and

(ii) Assignment Water made available to the City by RWCD pursuant to Paragraph 2 of the Assignment attached hereto as Exhibit "B" -- 1,537 acre-feet; or

(iii) Assignment Water made available to the City by the Secretary pursuant to Paragraph 3 of the Assignment attached hereto as Exhibit "B" -- 922 acre-feet.

(c) The City's annual entitlement to Colorado River water under Subarticle 5(b)(i) hereof shall be deemed to be met if initially made available for delivery at CAWCD's project delivery

point on the Colorado River, and shall be subject to reduction on account of losses by reason of evaporation and seepage occurring during the transportation of such water through the water supply system to the City's project delivery point. Said losses occurring on the City's Colorado River water supplies shall be determined by the Contracting Officer or the Operating Agency, but shall not exceed the City's pro rata share of losses as compared to losses due to evaporation and seepage occurring during transportation through the water supply system of all water supplies delivered during a year.

(d) The City's entitlement to Assignment Water under Subparagraphs 5(b)(ii) and 5(b)(iii) hereof, and its rights and obligations with respect to such Assignment Water, shall be subject to the terms and conditions of the Assignment attached hereto as Exhibit "B".

(e) The City's entitlement to Colorado River water and Assignment Water under this Contract shall be in addition to the City's entitlement to Central Arizona Project water for municipal and industrial use under the City's Central Arizona Project M&I water service subcontract (Contract No. [to be supplied]).

(f) During such periods as it operates and maintains the Central Arizona Project, the United States shall deliver Colorado River water and Assignment Water to which the City is entitled under this Contract through the water supply system. Subject to the provisions of Subarticles 5(c) and 5(d) hereof, the United States shall use all reasonable diligence to make available

to the City the quantity of Colorado River water and Assignment Water specified in the schedule submitted by the City in accordance with Article 6 hereof. After transfer of OM&R responsibility to the Operating Agency, the United States shall make deliveries of Colorado River water and Assignment Water to the Operating Agency which shall make subsequent delivery of such water to the City as provided herein.

(g) The obligation of the United States and the Operating Agency to deliver Colorado River water and Assignment Water to the City under this Contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, the contract between the United States and the State of Arizona dated February 9, 1944, the Opinion of the Supreme Court of the United States in the case of Arizona v. California et al., rendered June 3, 1963, 373 U.S. 546, and the Decree of that court in said case, entered March 9, 1964, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, or as hereafter modified;

(ii) Executive A, Seventy-Eighth Congress, Second Session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and

Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty, all hereinafter referred to as the Mexican Water Treaty;

(iii) The express understanding and agreement by the City that this Contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this Contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and City shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam, Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to City hereunder; and

(iv) The right of the United States or the Operating Agency temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works what-

soever affecting, utilized or, in the opinion of the Secretary or the Operating Agency, necessary for delivery of water hereunder, it being understood that so far as feasible the United States or the Operating Agency will (i) do so during periods of low water demands and (ii) give reasonable notice in advance of such temporary discontinuance or reduction.

(h) Subject to the terms and conditions herein, the United States and the Operating Agency shall be obligated to deliver Colorado River water and Assignment Water to the City without regard as to whether or not the Salt River Pima-Maricopa Indian Community exercises its right to use any or all of the exchange water referred to in Paragraph 12 of the Settlement Agreement.

(i) Delivery and use of Colorado River water and Assignment Water under this Contract is further conditioned on the following, and the City hereby agrees that:

(i) All uses of Colorado River water, Assignment Water and return flow shall be consistent with Arizona water law unless such law is inconsistent with the Congressional directives applicable to the Central Arizona Project.

(ii) The system or systems through which Colorado River water and Assignment Water for municipal and industrial (including ground water recharge) purposes is conveyed after delivery to the City shall consist of pipelines, canals, distribution systems, or other conduits provided and maintained with linings adequate in the Contracting Officer's judgment to prevent excessive conveyance losses.

(iii) The City shall not pump, or within its legal authority, permit others to pump ground water from within the exterior boundaries of the City's service area, which has been delineated on a map filed with the Contractor and approved by the Contractor and the Contracting Officer, for use outside of said service area unless such pumping is permitted under Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time, and the Contracting Officer, CAWCD, and the City shall agree, or shall have previously agreed, that a surplus of ground water exists and drainage is or was required; Provided, however, That such pumping may be approved by the Contracting Officer and CAWCD, and approval shall not be unreasonably withheld, if such pumping is in accord with the Colorado River Basin Project Act and upon submittal by the City of a written certification from the Arizona Department of Water Resources or its successor agency that the pumping and transportation of ground water is in accord with Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time.

(iv) The City shall not sell or otherwise dispose of or permit the sale or other disposition of Colorado River water and Assignment Water for use outside of Maricopa, Pinal, and Pima Counties; Provided, however, That this does not prohibit exchanges of Colorado River water and Assignment Water covered by separate agreements; and Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to . . .

Article 6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. [to be supplied]).

(j) (i) Colorado River water and Assignment Water scheduled for delivery in any year under this contract may be used by the City or resold or exchanged by the City pursuant to appropriate agreements approved by the Contracting Officer and CAWCD. If said water is resold or exchanged by the Contractor for an amount in excess of that which the City is obligated to pay under this Contract, the excess amount shall be paid forthwith by the City to CAWCD for application against the CAWCD's repayment obligation to the United States; Provided, however, That the Contractor shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to OM&R costs.

(ii) Colorado River water and Assignment Water scheduled for delivery in any year under this Contract that cannot be used, resold, or exchanged by the City may be made available by the Contracting Officer or the Operating Agency to other users. If such water is sold to or exchanged with other users, the City shall be relieved of its payments hereunder only to the extent of the amount paid to the Contracting Officer and the Operating Agency by such other users, but not to exceed the amount the City is obligated to pay under this Contract for said water.

(iii) In the event the City, the Contracting Officer, or the Operating Agency is unable to sell any portion of the Colorado River water or Assignment Water scheduled for delivery by the City but not required by the City in any year, the City

shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water as determined by the Contracting Officer or the Operating Agency.

(k) The City shall have the right to use Colorado River water and Assignment Water received under this Contract for any purpose consistent with Arizona law, including ground water recharge.

ARTICLE 6
Procedure for Ordering Water

6. At least six months prior to the delivery of Colorado River water and Assignment Water to the City under this Contract, the Contracting Officer or the Operating Agency shall issue a written notice of availability of such water to the City. The City will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer and the Operating Agency showing the quantities of (i) Colorado River water and (ii) Assignment Water requested for delivery. The City shall submit a schedule which requests the delivery of all Assignment Water available to it. If the first notice of availability of water is issued to the City by the Contracting Officer or the Operating Agency prior to June 1 of any year, the first schedule for the balance of said year shall be submitted to the Contracting Officer and the Operating Agency within 30 days after the City's receipt of such notice. If such notice is issued after June 1 of any year, the first schedule shall be submitted to the Contracting Officer and the Operating Agency within 30 days after the City's

receipt of such notice and shall cover the balance of such year and the next succeeding year. Thereafter, the amounts, times, and rates of delivery of water to the City during any year shall be in accordance with a water delivery schedule for that year, such schedule to be determined in the following manner:

(a) On or before June 1 of each year, the Contracting Officer shall announce (i) the amount of Colorado River water and (ii) the amount of Assignment Water available for delivery during the following year in a written notice to the Operating Agency and the City.

(b) On or before October 1 of each year, the City shall submit in writing to the Operating Agency and the Contracting Officer a water delivery schedule indicating the amounts of (i) Colorado River water and (ii) Assignment Water desired by the City during each month of the following year along with a preliminary schedule of water desired for the succeeding 2 years. The City shall schedule for delivery each year all Assignment Water available to it for delivery during that year.

(c) Upon receipt of such schedule, the Contracting Officer and the Operating Agency shall review it and, after consultation with the City, shall make only such modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to the City are consistent with the delivery capability of the project, considering, among other things, the availability of water and the delivery schedules of all subcontractors of Central Arizona Project water service; Provided, That

this provision shall not be construed to reduce annual deliveries to the City.

(d) On or before November 15 of each year, the Contracting Officer or the Operating Agency shall determine and furnish to the City the water delivery schedule for the next succeeding year which shall show the amounts of (i) Colorado River water and (ii) Assignment Water to be delivered to the City during each month of that year.

(e) The monthly water delivery schedules may be amended by the Contracting Officer or the Operating Agency upon the City's written request. Proposed amendments shall be submitted by the City within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer or the Operating Agency in like manner as the schedule itself.

(f) In no event shall the Contracting Officer or the Operating Agency be required to deliver in any one month (i) an amount of Colorado River water greater than eleven percent (11%) of the City's maximum annual entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract or (ii) an amount of Assignment Water greater than eleven percent (11%) of the City's maximum annual entitlement to Assignment Water under Subarticle 5(b)(ii) or 5(b)(iii) of this Contract; Provided, however, That the Contracting Officer or the Operating Agency may deliver a greater percentage of such water in any month if such increased delivery is compatible with the overall delivery of Central Arizona Project water to CAP

subcontractors as determined by the Contracting Officer and the Operating Agency, and if the City agrees to accept such increased deliveries.

ARTICLE 7
Points of Delivery--Measurement and Responsibility for Distribution of Water

7. (a) All water to be furnished to the City pursuant to this Contract shall be delivered at turnouts to be constructed by the United States at such point(s) on the water supply system as may be agreed upon in writing by the Contracting Officer and CAWCD, after consultation with the City.

(b) Unless the United States and the City agree by contract to the contrary, the City shall construct and install, at its sole cost and expense, connection facilities required to take and convey such water from the turnouts to the City's service area. The City shall furnish, for approval of the Contracting Officer, drawings showing the construction to be performed by the Contractor within the water supply system right-of-way six months before starting said construction. The facilities may be installed, operated, and maintained on the water supply system right-of-way subject to such reasonable restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by the Contracting Officer.

(c) All water delivered to the City pursuant to this Contract shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or by the Operating Agency. Upon the request of the

City or the Operating Agency, the accuracy of such measurements shall be investigated by the Contracting Officer or by the Operating Agency and the City, and any errors which may be mutually determined to have occurred therein shall be adjusted; Provided, That in the event the parties cannot agree on the required adjustment, the Contracting Officer's determination shall be conclusive.

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

(e) In addition to the right of the United States under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce the amount of water to be delivered through the Central Arizona Project, the United States or the Operating Agency may, after consultation with the City, temporarily discontinue or reduce the quantity of water to be furnished to the City as herein provided for the purpose of investigation, inspection, maintenance, repair, or replacement of any CAP facilities or any part thereof necessary for the furnishing of water to the City under this Contract, but so far as feasible the United States or

the Operating Agency shall coordinate any such discontinuance or reduction with the City and shall give the City due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Neither the United States, its officers agents, and employees, nor the Operating Agency, its officers, agents, and employees, shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to the City of less water than what has been paid for in advance, the City shall be entitled to be reimbursed for the appropriate proportion of advance payments of OM&R charges prior to the date of the City's next payment of OM&R charges or the City may be given credit toward the next payment of OM&R charges if the City should so desire.

ARTICLE 8
Priority in Case of Shortage

8. (a) Subject to the provisions of Section 304(e) of the Colorado River Basin Project Act, in the event of a shortage of the water supplies available to the Central Arizona Project, as determined by the Contracting Officer after consultation with CAWCD, Assignment Water furnished to the City under this Contract shall be subject to reduction in the same manner and to the same extent as agricultural water under Central Arizona Project agricultural water service subcontracts.

. . .

(b) In a time of shortage, the City's entitlement to Colorado River water under Subarticle 5(b)(i) of this Contract shall be determined by the following formula:

City's entitlement to Colorado River water in a time of shortage = $[(X+Y) \cdot (A+B)/(C+D)] - [(X/D) \cdot A]$*

Where:

X = the City's entitlement to Central Arizona Project water for M&I water use under Article 4.12 of Contract No. [to be supplied] as the same may be amended or supplemented from time to time;

Y = 7,991 acre-feet;

A = the total amount of water available from the Central Arizona Project for non-Indian M&I water use (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system and exclusive of "Colorado River water" as defined herein), as determined by the Contracting Officer in accordance with the method outlined in the Record of Decision of the Secretary published in the Federal Register on March 24, 1983;

B = the total amount of Colorado River water available to the Cities pursuant to this Contract with the Town of Gilbert and like contracts with the other Cities (after reduction on account of losses due to evaporation and seepage estimated to occur during transportation of such water through the water supply system);

C = 26,000 acre-feet.

D = the sum of all non-Indian municipal and industrial subcontractors' entitlements to Central Arizona Project water for M&I water use under Article 4.12 of all non-Indian CAP municipal and industrial subcontracts, as the same may be amended or supplemented from time to time;

* It is the intent of the parties that this calculation be performed in a manner which is consistent with the method of

calculation exemplified in Tables 1 and 2 attached hereto as Exhibit "C".

(c) Notwithstanding the provisions of Subarticle 5(c) of this Contract, the City's entitlement to Colorado River water, as determined in accordance with the formula set forth in Subarticle 8(b) hereof, shall be made available to the City at the City's project turnout(s).

(d) In a time of shortage, any Colorado River water available from the 22,000 acre-feet to be obtained by the United States pursuant to Subarticle 5(a) hereof in excess of that necessary to satisfy the entitlement of the City under Subarticle 8(b) of this Contract and the entitlements of the other Cities under Subarticle 8(b) of like contracts with such Cities shall be made available by the Secretary for delivery to non-Indian CAP municipal and industrial subcontractors other than the Cities pursuant to the Central Arizona Project M&I water service subcontracts with such subcontractors, pro rata in proportion to each such subcontractor's entitlement to Central Arizona Project water for M&I use under such subcontractor's Central Arizona Project M&I water service subcontract. The manner in which this Subarticle 8(d) is intended to operate is illustrated by Tables 1 and 2 attached hereto as Exhibit "C".

ARTICLE 9
Payments

9. (a) Subject to the provisions of Article 11 hereof, the City shall pay in advance for CAP OM&R costs estimated to be incurred by the United States or the Operating Agency in delivering

Colorado River water and Assignment Water to the City pursuant to this Contract. At least 6 months prior to the first delivery of such water, or as soon thereafter as is practicable, the Contracting Officer or the Operating Agency shall furnish the City with an estimate of the City's share of OM&R costs to the end of the initial year of water delivery and an estimate of such costs for the following year. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer or the Operating Agency, but prior to the delivery of water, the City shall advance to the Contracting Officer or the Operating Agency its share of such estimated costs to the end of the initial month of water delivery and without further notice or demand shall on or before the first day of each succeeding month of the initial year of water delivery and the following year advance to the Contracting Officer or the Operating Agency in equal monthly installments the City's share of such estimated costs. Advances of monthly payments for each subsequent year shall be made by the City to the Contracting Officer or the Operating Agency on the basis of annual estimates to be furnished by the Contracting Officer or the Operating Agency on or before June 1 preceding each said subsequent year, and the advances of payments for said estimated costs shall be due and payable in equal monthly payments on or before the first day of each month of the subsequent year. Differences between actual OM&R costs and estimated OM&R costs shall be adjusted in the next succeeding annual estimates; Provided, however, That if in the opinion of the Contracting Officer or the Operating Agency the

amount of any annual OM&R estimate is likely to be insufficient to cover the above-mentioned costs during such period, the Contracting Officer or the Operating Agency may increase the annual estimate of the City's OM&R costs by written notice thereof to the City, and the City shall forthwith increase its remaining monthly payments in such year to the Contracting Officer or the Operating Agency by the amount necessary to cover the estimated insufficiency. All estimates of OM&R costs shall be accompanied by data and computations relied on by the Contracting Officer or the Operating Agency in determining the amounts of the estimated OM&R costs and shall be subject to joint review by the City and the Contracting Officer or the Operating Agency.

(b) Other than as provided for in Exhibit "B" hereto with respect to Assignment Water, the City shall not be required to pay any water service capital charge(s) with respect to Colorado River water or Assignment Water to which the City is entitled under this Contract.

(c) Payment of all OM&R charges becoming due hereunder prior to or on the dates stipulated in Subarticle 9(a) hereof is a condition precedent to receiving water under this Contract.

(d) All payments to be made to the Operating Agency or the United States under Subarticle 9(a) hereof shall be made by the City as such payments fall due from revenues legally available to the City for such payment from the sale of water to its water users and from any and all other sources which might be legally available; Provided, That no portion of the general taxing

authority of the City, nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of this Contract, nor shall such sources be liable for any payments, contributions, or other costs pursuant to this Contract, or to satisfy any obligation hereunder unless duly and lawfully allocated and budgeted for such purpose by the City for the applicable budget year; and Provided, further, That no portion of this Contract shall ever be construed to create an obligation superior in lien to or on a parity with the Cities' revenue bonds now or hereafter issued. The City shall levy and impose such necessary water service charges and rates and use all the authority and resources available to it to collect all such necessary water service charges and rates in order that the City may meet its obligations hereunder and make in full all payments required under this Contract on or before the date such payments become due.

ARTICLE 10
Loss of Entitlement

10. The City shall have no right to delivery of Colorado River water or Assignment Water under this Contract during any period in which the City may be in arrears in the payment of any charges due the United States or the Operating Agency. The Contracting Officer or the Operating Agency may sell to another entity any water determined to be available under the City's entitlement for which payment is in arrears; Provided, however, That, except as provided to the contrary in Exhibit "B" hereto, the City may regain the right to use any unsold portion of the water determined to be

available under the City's original entitlement upon (i) payment of all delinquent charges plus any difference between the contractual obligation and the price received in the sale of the water by the Contracting Officer or Operating Agency and (ii) payment of charges for the current period.

ARTICLE 11
Refusal to Accept Delivery

11. In the event the City fails or refuses in any year to accept delivery of the quantity of water available for delivery to and required to be scheduled by it pursuant to this Contract, or in the event the City in any year fails to submit a schedule for delivery as provided in Article 6 hereof, said failure or refusal shall not relieve the City of its obligation to make the payments required in this Contract.

ARTICLE 12
Charges for Delinquent Payments

12. (a) The City shall be subject to interest, administrative, and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the City shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the City shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the City shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the City shall

. . .

pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

ARTICLE 13
Secretarial Control of Return Flow

13. (a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of CAWCD's service area as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for CAP use return flow which originates or results from water contracted for from the Central Arizona Project within the boundaries of CAWCD's service area if, in his judgment, such return flow is not being put to a beneficial use. The City may recapture and reuse or sell its return flow; Provided, however, That such return flow may not be sold for use outside Maricopa, Pinal, and Pima Counties; and

Provided, further, That this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2 of the City's Central Arizona Project M&I water service subcontract (Contract No. [to be supplied]). The City shall, at least 60 days in advance of any proposed sale of such water, furnish the following information in writing to the Contracting Officer and CAWCD:

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

(ii) The location and proposed use of the return flow.

(iii) The price to be charged for the return flow.

(b) The price charged for the return flow may cover the cost incurred by the City for Colorado River water and Assignment Water plus the cost required to make the return flow usable. If the price received for the return flow is greater than the costs incurred by the City, as described above, the excess amount shall be forthwith paid by the City to the CAWCD for application against CAWCD's repayment obligation to the United States. Costs required to make return flow usable shall include but not be limited to capital costs and OM&R costs including transportation, treatment, and distribution, and the portion thereof which may be retained by the City shall be subject to the advance approval of CAWCD and the Contracting Officer.

(c) Any return flow captured by the United States and determined by the Contracting Officer and CAWCD to be suitable

and available for use by the City may be delivered by the United States or Operating Agency to the City as a part of the water supply for which the City has subcontracted pursuant to Contract No. [to be supplied]), and such water shall be accounted and paid for pursuant to the provisions thereof.

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

ARTICLE 14
Water and Air Pollution Control

14. The City, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

ARTICLE 15
Quality of Water

15. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. Neither the United States nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. The City waives its right to make a claim against the United States, the Operating Agency, or any subcon-

tractor because of changes in water quality caused by the commingling of water to be delivered under this Contract with other water.

ARTICLE 16
Equal Opportunity

16. During the performance of this Contract, the City agrees as follows:

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

(b) The City will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The City will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising said labor union or workers' representative of the City's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The City will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The City will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the City's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the City may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as pro-

vided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The City will include the provisions of Subarticles 16(a) through 16(g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The City will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the City becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 17
Compliance with Civil Rights Laws and Regulations

17. (a) The City shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national

origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the City agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

ARTICLE 18
Notices

18. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the City and CAWCD, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States and CAWCD, when mailed, postage prepaid, or delivered to the Manager of the City, 119 North Gilbert

Road, Gilbert, Arizona 85234, on behalf of the City and the United States, when mailed, postage prepaid, or delivered to the General Manager, Central Arizona Water Conservation District, 23636 North Seventh Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

ARTICLE 19
Assignment Limited--Successors and Assigns Obligated

19. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid unless and until approved in writing by the Contracting Officer and CAWCD.

ARTICLE 20
Officials Not to Benefit

20. No Member of or Delegate to Congress, Resident Commissioner, or official of the City shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

ARTICLE 21
Transfer of OM&R Responsibility to CAWCD; Project Repayment

21. (a) At or prior to the date that the United States transfers OM&R responsibility for project works associated with delivery of water to the Cities to CAWCD as the Operating Agency, the United States shall secure the agreement of CAWCD to perform the United States' obligations under this Contract to deliver water under this Contract through the transferred works.

(b) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract and any amendment or revision thereof, the costs associated with the delivery of water to the City under this Contract shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

ARTICLE 22
Repayment Contract Controlling

22. Pursuant to the Repayment Contract, the United States has agreed to construct and, in the absence of an approved Operating Agency, to operate and maintain the works of the Central Arizona Project and to deliver Central Arizona Project water to the various subcontractors within CAWCD's service area; and CAWCD has obligated itself for the payment of various costs, expenses, and other amounts allocated to CAWCD pursuant to Article 9 of the Repayment Contract. The City expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this Contract No. 9-07-30-W0241 the day and year first above-written.

THE UNITED STATES OF AMERICA

By

. . .

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: _____ By _____
Secretary President

TOWN OF GILBERT, ARIZONA

Attest: _____ By _____
Clerk Mayor

Approved
as to Form: _____
City Attorney

Exhibit "A"

CAP Master Repayment Contract

DUPLICATE-ORIGINAL

Contract No. 14-06-w-245
Amendment No. 1
B.C. Draft 11/28/88

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND THE CENTRL ARIZONA WATER CONSERVATION DISTRICT
FOR DELIVERY OF WATER AND REPAYMENT OF COSTS OF THE
CENTRAL ARIZONA PROJECT

1. PARTIES

The parties to this contract, executed as of this first day of December, 1988, are the United States of America, acting through the Department of the Interior, and the Central Arizona Water Conservation District, a multi-county water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona.

2. AUTHORITIES

This contract is made pursuant to the:

2.1 Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto.

2.2 Boulder Canyon Project Act, approved December 21, 1928, 45 Stat. 1057, a supplement to the Federal Reclamation Laws.

2.3 Reclamation Project Act of 1939, approved August 4, 1939, 53 Stat. 1187, as amended.

2.4 Colorado River Basin Project Act, approved September 30, 1968, 82 Stat. 885, as amended, a supplement to the Federal Reclamation Laws.

2.5 Arizona Revised Statutes, Section 48-3701 et seq.

3. RECITALS

3.1 The Colorado River Basin Project Act provides, among other things, that for the purposes of furnishing irrigation water and municipal and industrial water supplies to water-deficient areas in 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, consisting of the principal works hereinafter described in Article 6.3.

3.2 Pursuant to the provisions of Arizona Revised Statutes, Section 48-3701 et seq., the Central Arizona Water Conservation District 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, Section 48-3701 et seq.

3.3 On December 15, 1972, the United States and the Contractor entered into a contract entitled "Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), whereby, among other things, the United States agreed to construct the Central Arizona Project and the Contractor agreed to repay the costs of the project properly allocable to the Contractor.

3.4 Subarticle 9.3(b) of said contract provides that the Contractor's repayment obligation shall not exceed $1.2 billion.

3.5 Subarticle 9.3(b) of said contract also provides that if the

Contractor's repayment obligation will exceed $1.2 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation.

3.6 Both parties acknowledge that the Contractor's repayment obligation will exceed $1.2 billion, and have agreed to increase the Contractor's repayment ceiling to a level sufficient to facilitate completion of the project.

4. ARTICLES OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is agreed by and between the parties hereto as follows:

5. DEFINITIONS

When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the terms:

5.1 "Federal Reclamation Laws" or "Reclamation Laws" shall mean the Act of June 17, 1902, 32 Stat. 388, and all acts amendatory thereof or supplementary thereto.

5.2 "Basin Project Act" shall mean the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, as amended, which is a supplement to the Federal Reclamation Laws.

5.3 "Secretary" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

5.4 "Contracting Officer" shall mean the Secretary or his authorized designee acting in his behalf.

5.5 "Contractor" shall mean the Central Arizona Water

Conservation District, organized pursuant to Arizona Revised Statutes, Section 48-3701 et seq.

5.6 "Service area" shall mean the area now included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal, and Pima Counties of Arizona and such other counties as may hereafter become part of the District, exclusive of any Indian reservation land lying wholly or partly within said Counties.

5.7 "Subcontractor" shall mean any irrigation district, municipality, individual, or any entity which enters into a water service subcontract with the United States and the Contractor in furtherance of the provisions of the Basin Project Act.

5.8 "Central Arizona Project" or "project" shall mean the project and works authorized by Section 301(a) of the Basin Project Act and constructed by the United States pursuant to the provisions of said Act and this contract.

5.9 "Project works" shall mean the principal works described in Section 301(a) of the Basin Project Act, and appurtenances thereto, or as modified pursuant to Article 6.4 hereof, together with lands, interests in lands, and rights-of-way for such works and appurtenances.

5.10 "Water supply system" shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt Gila and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

5.11 "Distribution works" shall mean those facilities constructed or financed by the United States under the authorization in Section 309(b) of the Basin Project Act for the primary purpose of

distributing the project water supply within the service area after said project water supply has been transported or delivered through the water supply system.

5.12 "Agricultural water" or "irrigation water" shall mean project water used primarily in the commercial production of agricultural crops or livestock, including domestic use incidental thereto, on tracts of land operated in units of more than 5 acres.

5.13 "Miscellaneous water" shall mean water delivered from the project, or by exchange for project water, for recreational and fish and wildlife purposes at other than project facilities and shall have a lesser priority of use than agricultural water.

5.14 "Municipal and industrial water," herein referred to as "M&I water," shall mean project water other than agricultural or miscellaneous water delivered by means of the project works.

5.15 "Lands not having a recent irrigation history" shall mean, except where otherwise determined by the Secretary for efficiency of subcontractor's operation, lands which the Secretary determines were not irrigated during the period September 30, 1958, to September 30, 1968.

5.16 "OM&R" shall mean the care, operation, maintenance, and replacement of project works.

5.17 "Exchange water" shall mean Colorado River water made available in exchange for or in replacement of existing supplies from surface sources other than the mainstream of the Colorado River.

5.18 "Transferred works" shall mean such facilities of the water supply system or of other construction stages as to which OM&R

responsibility is transferred from the United States to the Operating Agency.

5.19 "Operating Agency" shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer.

5.20 "Transfer notice" shall mean a written notice or notices, numbered consecutively, which the Contracting Officer transmits to the Operating Agency and which shall designate:

(a) the transferred works;

(b) items of equipment and supplies transferred to the Operating Agency; and

(c) the date upon which such transfer will be effected.

5.21 "Gila River system waters" shall mean waters of the Gila River and tributaries thereof east of the Yuma-Maricopa County line.

5.22 "Notice of completion" shall mean the notice which the Contracting Officer issues to Contractor to announce the substantial completion of a construction stage. Each such notice of completion shall include the estimated amount of the repayment obligation for the construction stage to which the notice pertains, the date of initiation of repayment for the construction stage and indicate the amount and due date for the first payment for the construction stage.

5.23 "Development Fund" shall mean the separate fund, known as the Lower Colorado River Basin Development Fund, established in the Treasury of the United States pursuant to Section 403(a) of the Basin Project Act.

5.24 "Year" shall mean the period January 1 through the next

succeeding December 31.

5.25 "Contractor's Construction Cost Repayment Obligation," hereinafter referred to as "repayment obligation," shall mean the total amount of all construction costs including related construction claims and interest thereon, OM&R cost during construction, and interest on costs allocated to the M&I water and power functions during construction, of the Central Arizona Project, incurred therefor and as determined by the United States and further described in Article 6.2 hereof, excluding reimbursable costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors, and which is determined by the Secretary, after consultation with the Contractor, to be allocable to and repayable by the Contractor in accordance with the provisions of the Basin Project Act and this contract.

5.26 "Return flow" shall mean all agricultural, M&I, and miscellaneous waste water, seepage, and ground water which originates or results from water contracted for from the Central Arizona Project, but shall not include any water delivered through the project works for ground water recharge purposes.

5.27 "Project water" shall mean (a) all water allocated by the Secretary for project purposes by Federal Register notice dated March 24, 1983, and any subsequent reallocation by the Secretary as contemplated in paragraph 6 of said Federal Register notice, which water is available pursuant to contracts with the Secretary from: (1) the Colorado River; (2) Central Arizona Project dams and reservoirs; and (3) return flows captured by the Secretary for project use; (b) any water

delivered to entities in Arizona, through the project works, as a replacement supply for Cliff Dam; (c) water delivered to water users in Arizona, through the project works, in exchange for water delivered to users in New Mexico from or by means of the project works; and (d) any additional water not included in (a) above, that is required to be delivered by the Secretary through the project, pursuant to the Ak-Chin Water Rights Settlement Act of 1978 (Public Law 95-328), as amended on October 19, 1984 (Public Law 98-530); the Southern Arizona Water Rights Settlement Act of October 12, 1982 (Title III of Public Law 97-293); and, subject to the execution of a settlement agreement by the Contractor providing for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community and to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (Public Law 100-512), up to 22,000 acre-feet annually of Colorado River water to be delivered through the project works in accordance with said settlement agreement and legislation.

5.28 "Indian lands" shall mean the lands within any Indian reservation for which an allocation of project water has or will be made by the Secretary for delivery through project works.

5.29 "Navajo Project" shall mean the interests of the United States in the Navajo Generating Station and the Transmission System, or any replacement thereof, as authorized by Section 303 of the Basin Project Act and as described in contracts entered into pursuant to that Act.

5.30 "Construction stage" shall mean any one of the following: (1) the water supply system; (2) New Waddell and Modified Roosevelt Dams; (3) replacement features or programs for Cliff Dam; (4) Tucson terminal storage; (5) Hooker Dam or suitable alternative; and (6) Buttes Dam.

5.31 "Plan 6" shall mean Plan 6 for the Regulatory Storage Division of the Central Arizona Project as approved by Record of Decision of the Secretary dated April 3, 1984 as amended and supplemented by Records of Decision of the Secretary dated May 20, 1986 (Supplement One) and June 17, 1988 (Supplement Two).

5.32 "Allocable cost" shall mean (a) with respect to the project, the total project cost less (1) the cost of non-Indian distribution works, (2) the cost of the safety of dams component of Plan 6, (3) the cost of Indian distribution systems, (4) the cost of the Colorado River Division and the New Mexico fish hatchery, (5) the cost of cultural resources studies, (6) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (7) the costs of Charleston Dam and San Pedro Aqueduct, (8) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (9) such other costs as determined appropriate by the Contracting Officer; and (b) with respect to each construction stage, the total cost of such stage less that portion of the following costs associated with such stage: (1) the cost of the safety of dams component of Plan 6, (2) the cost of cultural resources studies, (3) the contributions provided by the States of Arizona and New Mexico prior to execution of the Plan 6 Funding Agreement, (4) the cost of 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and related costs in the Navajo Project, and (5) such other costs as determined appropriate by the Contracting Officer.

5.33 "OM&R Transfer Contract" shall mean the August 5, 1987, contract entitled "Contract Between the United States of America and the

Central Arizona Water Conservation District for the Transfer of Operation and Maintenance of Facilities" (Contract No. 7-07-30-W0167), and any amendment or revision thereof.

5.34 "Overall repayment period" shall mean the period of time beginning with initiation of repayment of the first construction stage and ending with final payment of the last construction stage.

5.35 "Plan 6 Funding Agreement" shall mean the April 15, 1986, agreement entitled "Agreement Among the United States, the Central Arizona Water Conservation District, the Flood Control District of Maricopa County, the Salt River Agricultural Improvement and Power District and Salt River Valley Water Users' Association, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, the State of Arizona, and the City of Tucson for Funding of Plan Six Facilities of the Central Arizona Project, Arizona, and for other Purposes," as it may be supplemented or amended.

5.36 "Permanent service" shall mean that water supply service commencing in the year following substantial completion of the water supply system and continuing in perpetuity.

5.37 "Ground water recharge" shall mean the recharge of water pursuant to title 45, chapter 2, article 13, Arizona Revised Statutes, or the underground storage and recovery of water pursuant to title 45, chapter 3, Arizona Revised Statutes, or as said statutes may hereafter be amended or revised.

5.38 "Project power" shall mean the United States' entitlement to capacity and energy from the Navajo Project.

6. PROJECT CONSTRUCTION

6.1 Agreement of the United States. Subject to the terms and

conditions of this contract and within the limits of the funds made available therefor by Congress, the United States will expend toward the construction of the project, exclusive of interest costs during construction, $832,180,000 based on 1967 cost estimates, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein, or so much of such amount, as in the opinion of the Secretary, is necessary to construct said project, whichever amount is the lesser. The aforementioned amount includes the United States' costs of participation in the Navajo Project.

6.2 Costs of Project.

(a) The estimated construction cost of $832,180,000 for the project, based upon 1967 prices, has been determined as follows:

	$ 1,000's
Main System	
Granite Reef Division	407,740
Orme Division	42,340
Salt-Gila Division	47,170
Tucson Aqueduct (Colorado River source)	46,300
Buttes Dam	35,240
Navajo Project	106,000
Subtotal	684,790
Other Separate Features	
Hooker Dam or suitable alternative	31,730
Charleston Dam and San Pedro Aqueduct (San Pedro River source)	36,420
Subtotal	68,150
Miscellaneous Features	
*Gila River Division	5,250
Indian Distribution System	19,970
Colorado River Division	42,450
Drainage System	11,570
Subtotal	79,240
Total Project	$832,180

*Note: Fish hatchery costs, some of which may be located on the Colorado River.

Provided, however, That (i) the adjustment provisions of Article 6.1 apply

to the total construction costs of the project and not to the costs of the individual line items set out in this Subarticle 6.2(a), and (ii) in accordance with provisions of Article 6.4 herein, the references to the individual line items set out in this Subarticle 6.2(a) are not to be deemed a determination that each of the features referred to in the individual line items will be constructed or that costs will be incurred for each of said individual line items based upon a percentage which the estimated costs for each individual line item bears to the project's total estimated construction costs.

(b) The Central Arizona Project costs incurred by the United States which are to be repaid by Contractor shall include the share allocated to the Contractor of (i) construction costs of the project, (ii) all expenses of whatsoever kind or nature heretofore or hereafter incurred by the United States in connection with, growing out of, or resulting from the construction, and (iii) the OM&R during construction of project works. The aforementioned share of allocated costs shall also include, but shall not be limited to, interest during construction on costs allocated to the M&I water and power functions, the cost of labor, materials, equipment, engineering, legal services, surveys, investigations, property, superintendence, administration, overhead, general expenses, special services, damages of all kinds and character, inspection, repair, and protection of project works and water supply, and the costs of all lands, interests in lands, and rights-of-way acquired by the United States for the project, all as determined by the Secretary.

6.3 Principal Works of the Project. The works and facilities to be constructed under this contract shall consist of the following principal

works:

(a) A system of main conduits and canals, including the Havasu Pumping Plant and a main canal and pumping plants (Granite Reef Aqueduct and pumping plants), for diverting and carrying water from Lake Havasu to the confluence of the Salt and Verde Rivers, which system will have a capacity of 3,000 cubic feet per second;

(b) Salt-Gila Aqueduct and pumping plant;

(c) Tucson Aqueduct and pumping plants;

(d) New Waddell and Modified Roosevelt Dams;

(e) replacement features or programs for Cliff Dam;

(f) Tucson Terminal Storage (if approved by the Secretary);

(g) Buttes Dam and Reservoir;

(h) Hooker Dam and Reservoir or suitable alternative which shall be constructed in such manner as to give effect to the provisions of Section 304(f) of the Basin Project Act;

(i) Charleston Dam and Reservoir and the San Pedro Aqueduct;

(j) related canals, regulating facilities, and electric transmission facilities required for the operation of said principal works;

(k) related water distribution and drainage works; and

(l) appurtenant works.

No works or facilities for the treatment of water are included in the project works to be constructed by the United States. Nothing contained herein shall be construed to indicate the order in which the aforedescribed works will be constructed.

6.4 Changes in Project Works. Should the Secretary, either before or during construction, determine it to be in the best interests of

the project, he may, upon the completion of the studies currently being made or to be made, including land classifications, hydrological, engineering, geological, sedimentation, water supply, and repayment ability, and after consultation with the Contractor, change the location, size, or capacity of any of the project works, or may eliminate works, or add works to those described above, and the Secretary's decision on such changes, eliminations, and additions shall be conclusive.

6.5 Construction Conditions. The United States shall be under no obligation to commence or, having commenced, to continue construction of project works until transfer from the State of Arizona of such State-owned lands or interests therein, in a form acceptable to the Attorney General of the United States, as the Secretary determines is necessary in the construction, operation, or maintenance of the project.

6.6 Annual Work Program. During construction of the project works the Contracting Officer will consult with the Contractor and/or with any subcontractor through or within whose service area project works are to be constructed to achieve maximum coordination between such construction program and the annual programs of any affected subcontractor. Within 30 days following the enactment by Congress and Presidential approval of annual or supplementary appropriation acts and the allotment of funds thereunder for continued construction of the project, the United States will furnish the Contractor with a notice and statement showing the proposed construction program for the balance of the current fiscal year and for the following fiscal year or years. If so requested in writing by the Contractor within 30 days of its receipt of such notice, the Secretary will consult with the Contractor and/or the affected subcontractor with respect

to the proposed program. The action of the Contracting Officer concerning the program after such consultation shall be final.

6.7 Inability of the United States to Complete Project on Basis of Cost Estimates. If construction of the project works shall have been commenced but, prior to completion, the Secretary determines that the cost of constructing the project will exceed the maximum amount to be expended therefor by the United States as provided for in Article 6.1 hereof, the Secretary may after consultation with the Contractor terminate construction and declare the obligations of the United States hereunder with regard to completion of construction of the project to have been fulfilled. If appropriations for the continuance and/or completion of construction in amounts sufficient in the opinion of the Secretary to complete said construction are authorized by Congress and are available, the Secretary shall consult with the Contractor and shall make continuation of construction contingent upon the execution of an amendatory contract with the Contractor wherein the Contractor's maximum repayment obligation is increased so as to cover the increased reimbursable costs as determined by the Secretary; Provided, however, That the Contractor shall not utilize any part of the completed or unfinished project facilities in the absence of written agreement with the Secretary for reimbursement therefor.

7. PROJECT OPERATION, MAINTENANCE, AND REPLACEMENT

7.1 Operation and Maintenance and Water Deliveries by the United States Prior to Completion of Construction. Except as provided in the OM&R Transfer Contract, prior to completion of project works by the United States, as determined and announced to the Contractor in writing by the Secretary, the United States will operate and maintain said project

facilities. The cost of said OM&R allocated to the Contractor shall be included in the Contractor's repayment obligation; Provided, however, That said OM&R cost shall not be included with the project cost ceiling set out in Article 6.1 hereof. During the aforesaid period, project water, if available, may be disposed of by the Secretary at charges which the Secretary determines to be appropriate; Provided, however, That to the extent deemed feasible by the Secretary, preference will be given to subcontractors and Indian lands. Payment for water shall be made in advance by the water user. The places of measurement and delivery of said water shall be established by the Secretary after consultation with the Contractor. Except as provided in the OM&R Transfer Contract, the proceeds accruing from the disposal of such water shall be credited to the Development Fund and applied toward the costs of the project as determined by the Secretary.

7.2 Operation and Maintenance and Water Deliveries after Completion of Construction. Except as provided in the OM&R Transfer Contract and any future agreements for the transfer of OM&R of the project works or portions thereof, upon completion of construction of a construction stage or upon completion of construction of the project, the United States shall operate and maintain such construction stage or the project and shall make project water available to project water users.

8. DELIVERY OF WATER

8.1 Obligation of United States. Subject to the terms, conditions, and provisions set forth herein, the United States will deliver project water to Contractor and, during such periods as it operates and maintains the water supply system, the United States will also transport and

deliver said water to the subcontractors. After transfer of OM&R the United States will make deliveries of Colorado River water to the Operating Agency; deliveries of other project waters will be made pursuant to determinations made by the Secretary.

8.2 Term of Contract. Subject to the terms, conditions, and provisions set forth herein, this contract is for permanent service.

8.3 Conditions Relating to Delivery.

(a) The obligation of the United States to deliver water under this contract is subject to:

(i) The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, dated September 30, 1968, 82 Stat. 885; the contract between the United States and the State of Arizona, dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of Arizona v. California et al., 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as amended on February 28, 1966, at 383 U.S. 268, and supplemented on January 9, 1979, at 439 U.S. 419, as now issued or hereafter modified.

(ii) Executive A, Seventy-eighth Congress, Second Session, a treaty between the United States of

America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the water of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, Second Session, a protocol signed at Washington on November 14, 1944, supplementary to the Treaty.

(iii) The express understanding and agreement by the Contractor that this contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and the Contractor shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management, and operation of Hoover Dam,

Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water to be delivered to Contractor hereunder.

(iv) The right of the United States temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs to any works whatsoever affecting, utilized or, in the opinion of the Secretary, necessary for delivery of water hereunder, it being understood that so far as feasible the United States will (1) do so during periods of low water demands and (2) give reasonable notice in advance of such temporary discontinuance or reduction.

(b) Delivery of Colorado River water by the United States under this contract shall be charged to the State of Arizona's apportionment under the aforementioned Supreme Court Decree of March 9, 1964, in Arizona v. California and will discharge to that extent the obligation of the United States to deliver water under the aforementioned contract between the United States and the State of Arizona, dated February 9, 1944.

8.4 Delivery Points. Colorado River water to be furnished to the Contractor pursuant to this contract will be delivered by the United States in the Colorado River at the point of diversion from Lake Havasu where the intake structures of the Havasu Pumping Plant are

constructed. Agua Fria and Upper Gila River system waters will be delivered to the Contractor at New Waddell and Buttes Dams, respectively. Delivery points for other project water supplies and for return flows will be determined by the Contracting Officer after consultation with the Contractor and/or the affected subcontractor therefor.

8.5 Measurement.

(a) The quantity of Colorado River water pumped from Lake Havasu for the project shall be measured by means of measuring devices to be installed as part of the project works. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available, estimate the amount of water delivered to the Contractor.

(b) Deliveries of project water to the various subcontractors shall be measured by means of measuring devices to be installed as part of the project works at the points along the various aqueducts at which such water may be diverted for each of said subcontractors, and/or at the points in the various reservoirs formed by the dams constructed as part of the project works at which such water may be diverted for subcontractors and/or at the points where return flow may be delivered. These points of measurement will be established by the Secretary after consultation with Contractor and the affected subcontractor. If, for any reason, in the opinion of the Secretary, said measuring devices shall fail to operate satisfactorily, the Secretary will, from the best information available and after consultation with the Contractor and the affected subcontractor, estimate the amount of water delivered to each such subcontractor. The Secretary shall at all times have access over any lands

and rights-of-way of a subcontractor for the purpose of inspecting and checking said measuring devices.

8.6 Responsibility for Distribution of Water after Leaving Water Supply System. Whether or not the United States operates and maintains the project facilities, the United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water after said water has been diverted from the water supply system. At such time as the Operating Agency assumes responsibility for the OM&R of project works, the responsibility for diversion, carriage, and transportation of the water through the water supply system shall be the sole responsibility of the Operating Agency. Responsibility for distribution of water beyond the water supply system shall be that of the subcontractors to whom said water is delivered from the water supply system. The United States, its officers, agents, and employees, shall not be liable for damage or claim of damage of any nature whatsoever for which there is legal responsibility arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water, and each subcontractor shall hold the United States, its officers, agents, and employees, harmless from any and all such claims.

8.7 Quantity of Water to be Delivered.

(a) The Secretary reserves the right to determine that quantity of Colorado River water to be released each year from Lake Mead for use by the Central Arizona Project pursuant to applicable law, which shall include the quantity of water which may be allocated by the Secretary for use on Indian lands.

(b) The quantity of Colorado River water available under

this contract for project purposes shall not exceed the quantity of water available to Arizona under the aforementioned Supreme Court Decree in Arizona v. California and in Arizona's water delivery contract with the United States after first providing for satisfaction of:

(i) present perfected rights and perfected rights described in Article II(D) of the Decree and the rights of other Federal reservations established prior to September 30, 1968; Provided, however, That the quantities of Colorado River water reserved to satisfy the aforesaid rights shall not, except as provided in said Decree, be reduced under any circumstances or for any reason whatsoever including, without limitation, a temporary use permitted by the Secretary by other water users in Arizona, California, or Nevada, of water reserved pursuant to the foregoing but not needed during any calendar year; And provided further, That no rights to the recurrent use of such water shall accrue by reason of said temporary use; and

(ii) the quantities of water provided for in all water delivery contracts between the United States and water users in Arizona as of September 30, 1968.

(c) The quantity of Colorado River water available under this contract for project purposes, including water for use on Indian lands

shall have the same priority as to delivery as the quantities of Colorado River water delivered pursuant to water delivery contracts, Federal reservations of water, and other arrangements between the United States and water users in Arizona entered into subsequent to September 30, 1968, for use of Colorado River water on Federal, State or privately owned lands in Arizona in total quantities not to exceed 164,652 acre-feet of diversions per year; Provided, however, That the Contractor shall hold the United States, its officers, agents, employees, and successors or assigns, harmless as to any and all claims for damages to persons or to property direct or indirect and of whatever nature, arising out of or which may in any manner be connected with the operation and/or effect of this Subarticle.

(d) The limitation on contracting in Subarticle 8.7(c) above shall not apply to contracts with holders of present perfected rights to Colorado River water in Arizona or to the Secretary's order of November 24, 1982, reserving Colorado River water for the Cibola National Wildlife Refuge. Nothing in Subarticle 8.7(c) shall restrict the right of the Secretary under water service contracts referred to in said Subarticle to terminate and/or reduce any entity's entitlement to Colorado River water and to make that entitlement available to other water users in Arizona.

(e) During any year when the subcontractors cannot use any portion of their entitlement to project water, and such water cannot be resold or exchanged in accordance with the terms and conditions of the water service subcontracts, the Contractor shall have the right in its discretion to resell any or all of such water or to use any or all of such water for ground water recharge purposes, including the subsequent recovery and resale

of such water, subject to Federal law, including but not limited to the Reclamation Reform Act of 1982, State of Arizona law, and such rules and regulations as the Secretary may deem appropriate. Subject to the terms and conditions of water service subcontracts, the water orders of all subcontractors shall be met before any project water is made available to the Contractor under this provision.

8.8 Subcontracts.

(a) The United States shall be a party to subcontracts.

(b) The Secretary and the Contractor shall require in each subcontract that:

(i) unless and until otherwise provided by Congress, water from the Central Arizona Project shall not be made available directly or indirectly for the irrigation of lands not having a recent irrigation history, as determined by the Secretary, except in the case of Indian lands, national wildlife refuges, and, with the approval of the Secretary, State-administered wildlife management areas;

(ii) there be in effect measures, adequate in the judgment of the Secretary and the Contractor, to control expansion of irrigation from aquifers affected by irrigation in the Contractor's service area and to reduce pumping of ground water in the agricultural subcontractors' service areas by the amount of project water received by said agricultural subcontractors;

(iii) the canals and distribution systems through which water is conveyed after its delivery to the subcontractors shall be provided and maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses;

(iv) neither the Secretary, the Contractor nor any subcontractor shall pump or permit others to pump ground water from within the exterior boundaries of the service area of a subcontractor receiving water from the Central Arizona Project for any use outside of said subcontractor's service area unless the Secretary, the Contractor, and such subcontractor shall agree, or shall have previously agreed, that a surplus of ground water exists and that drainage is or was required;

(v) except as otherwise agreed by the Contracting Officer, neither the Contractor nor any subcontractor shall sell or otherwise dispose of or permit the sale or other disposition of any project water, including return flows, for use outside the Contractor's service area;

(vi) irrigation water made available thereunder may be made available by the Secretary for M&I purposes if and to the extent that such water is no longer required by the subcontractor for irrigation purposes and shall be made available in all cases

where lands receiving project water have been converted to municipal and industrial use; Provided, however, That subcontracts effectuating such transfers are subject to the approval of the Secretary and the Contractor, which approval shall not be withheld unreasonably; And provided further, That it shall be deemed unreasonable for the Secretary or the Contractor to withhold such approval on the basis that the right to convert from irrigation to M&I use for a specific development could better be exercised in some other subcontractor's service area. The water so converted from irrigation to M&I purposes will be delivered with the same priority and at the same rate per acre-foot as other M&I water. Likewise, subcontracts for furnishing water for M&I purposes, including, but not limited to, ground water recharge to the extent ground water recharge is consistent with Arizona law, shall provide that, if water to be delivered thereunder is not presently required for such purposes, such water may be made available by the Secretary to other users; Provided, further, That the subcontractor shall be relieved of its payment obligation under its subcontract only to the extent of the amount paid by such other users;

(vii) the acreage limitation provisions of Reclamation Laws shall apply solely to agricultural water service;

(viii) except as specifically provided therein, it shall be the provisions of this contract which shall be controlling in the event of any inconsistency between this contract and any subcontract;

(ix) the subcontractor shall levy all necessary assessments, tolls, and other charges and shall use all of the authority and resources available to the subcontractor to collect the same in order that the subcontractor may meet its obligations thereunder to make in full all payments required under said subcontract on or before the date such payments become due and to meet other obligations under the subcontracts;

(x) the subcontractor establish, maintain, and provide the United States and the Contractor with land, water use, and crop census records.

8.9 Shortages. As provided in Section 301(b) of the Basin Project Act, Article II(B)(3) of the Decree of the Supreme Court of the United States in Arizona v. California, 376 U.S. 340, dated March 9, 1964, shall be so administered that in any year in which, as determined by the Secretary, there is insufficient mainstream Colorado River water available for release to satisfy the annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada, diversions from the mainstream of the

Colorado River for the Central Arizona Project and for other uses in Arizona under contracts or other agreements with the United States executed subsequent to September 30, 1968, shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under contracts existing as of September 30, 1968, with the United States by diversion works heretofore constructed, and by other Federal reservations in California of 4,400,000 acre-feet of Colorado River water, and by users of the same character in Arizona and Nevada. Water users in the State of Nevada shall not be required to bear shortages in any proportion greater than would have been imposed in the absence of said Section 301(b), nor shall said Section affect the relative priorities, among themselves, of water users in Arizona, California, and Nevada which are senior to diversions for the Central Arizona Project, or amend any provisions of said Decree. The aforesaid limitation stated in Section 301(b) shall not apply so long as the Secretary shall determine and proclaim that means are available and in operation which augment the water supply of the Colorado River system in such quantity as to make sufficient Colorado River mainstream water available for release to satisfy annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada.

8.10 Rate of Diversions of Colorado River Water. Subject to (a) the first proviso in Section 301(a) of the Basin Project Act, (b) the provisions of Subarticle 10.6(b) hereof, and (c) the provisions of Subarticle 8.7(a) hereof, any capacity in the Granite Reef Aqueduct in excess of 2,500 cubic feet per second may be utilized in the operations of

the project so as to maximize project benefits; Provided, however, That the use of such capacity shall not result in the annual diversion of a quantity of water in excess of the project's legal entitlement under the Basin Project Act.

8.11 Priority in Case of Shortage.

(a) Subject to the provisions of Section 304(e) of the Basin Project Act and the Secretary's allocation decisions published in the Federal Register on December 10, 1980, and March 24, 1983, any project water as defined in Subarticle 5.27(a) hereof, furnished through project facilities shall, in the event of shortages thereof, be reduced pro rata until exhausted, first for miscellaneous uses and next for agricultural uses, before such project water furnished for M&I uses is reduced. Thereafter, such project water for M&I uses will be reduced pro rata among all M&I water users. Each subcontract or other water delivery arrangement entered into pursuant to this contract shall so provide. This article shall not apply to Indian uses; Provided, however, That the relative priorities between Indian and non-Indian uses shall be as determined by the Secretary. Notwithstanding the provisions of this Subarticle, project water made available as a result of construction and operation of modifications to Roosevelt Dam as part of Plan 6 shall be distributed as provided in the Plan 6 Funding Agreement, and shall not be subject to reduction in the event of shortages of other project water supplies.

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

8.12 No Guarantee of Availability of Water. The United States

assumes no responsibility with respect to the quantity of water available for delivery pursuant to this contract. In no event shall the United States, its officers, agents, or employees, be liable for any damages, direct or indirect, of whatsoever nature, arising out of or in any way connected with any suspension or reduction in the delivery of water pursuant to this contract or with any shortage in the quantity of water available for delivery hereunder or to any subcontractor for any cause whatsoever including, but not limited to, drought, delay in the construction of the Navajo Project, the failure of the Navajo Project to be completed, or the lack of power for pumping.

8.13 Secretarial Control of Return Flow.

(a) The Secretary reserves the right to capture all return flow flowing from the exterior boundaries of the Contractor as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for project use return flows within the boundaries of Contractor if in his judgment such return flow is not being put to a beneficial use. Any subcontractor may sell its return flow; Provided, however, That except as otherwise agreed by the Contracting Officer, such return flow may not be sold for use outside the Contractor's exterior boundaries; And provided further, That if the price received for such return flow is higher than the price paid for such project water, the amount of the excess price shall be paid by such subcontractor to the Contractor for application against the Contractor's repayment obligation to the United States.

(b) Any return flow captured by the United States and determined by the Secretary to be suitable and available for use on lands

within the service area and/or by any subcontractor therein may be delivered by the United States to a subcontractor as a part of the water supply for which the subcontractor contracts hereunder and such water shall be accounted and paid for pursuant to the provisions hereof.

8.14 Water and Air Pollution Control. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

8.15 Quality of Water. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of project water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer or the Operating Agency. Neither the United States nor the Operating Agency warrants the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

8.16 Exchange Water. Where the Secretary determines that a subcontractor is physically able to receive Colorado River mainstream water in exchange for or in replacement of existing supplies of surface water from sources other than the Colorado River to provide water supplies for users upstream from New Waddell, Modified Roosevelt and Buttes Dams, the Secretary may require that said subcontractor agree to accept said mainstream water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act.

8.17 Rights Reserved to the United States to Have Water Carried by Project Facilities. As a condition to the construction of project facilities and the delivery of water hereunder, the Contractor agrees that all project facilities will be available for the diversion, transportation, and carriage of water for Indian and non-Indian uses pursuant to arrangements or contracts therefor entered into on their behalf with the Secretary. In the event the responsibility for the OM&R of project facilities is transferred to and assumed by the Operating Agency, such transfer shall be subject to the condition that the Operating Agency shall divert, transport, and carry such water for such uses pursuant to the provisions of the aforesaid arrangements or contracts; Provided, however, That the aforesaid arrangements or contracts will include provisions for the payment of applicable construction costs and OM&R costs in accordance with Articles 9.3 and 9.6 of this contract.

8.18 Wheeling Non-Project Water. After taking into consideration the water delivery requirements of contracts for project water service and subject to availability of project capacity, non-project water may be wheeled through project facilities pursuant to wheeling agreements between the Contractor and the entity desiring to use project facilities for wheeling purposes. All such agreements shall be subject to the approval of the Contracting Officer who shall consider, among other things, the impact that the wheeling of such non-project water will have on the quality of project water. The Contractor and the Contracting Officer shall jointly develop a standard form of wheeling agreement including the rate structure for wheeling non-project water. All wheeling charges shall be paid to the Contractor by the entity contracting for the wheeling of non-project water.

The Contractor shall be entitled to retain revenues from wheeling charges sufficient to cover all OM&R costs associated with wheeling such non-project water, plus an administrative charge to be jointly determined by the Contractor and the Contracting Officer. All revenues from wheeling charges in excess of the OM&R costs and administrative charges shall be remitted by the Contractor to the Contracting Officer and deposited into the Development Fund.

8.19 Use of Project Power to Wheel Non-Project Water. If the energy requirements necessary for the pumping of project water are met and subject to the requirements of the Navajo Power Marketing Plan published in the Federal Register on December 21, 1987, project power may be used to wheel non-project water through project facilities under such conditions of use, including amounts, times of use, losses, costs, and other conditions as are established by the Contractor and approved by the Contracting Officer.

9. PAYMENT OF PROJECT COSTS ALLOCATED TO CONTRACTOR

9.1 Allocation of Construction Costs.

(a) Upon completion of each construction stage, the Contracting Officer will allocate costs to the various project purposes using the separable costs-remaining benefits procedure.

(b) For repayment purposes the reimbursable cost allocated to irrigation and M&I water by the separable costs-remaining benefits procedure will be combined and will hereinafter be termed the "water supply allocation." Upon completion of each construction stage, and at the periodic intervals specified in Subarticle 9.3(d), suballocation of the water supply allocation will be made to the irrigation and M&I water functions proportional to the water estimated to be used for each purpose

during the repayment period of each construction stage. The cost thus suballocated to the irrigation function will hereinafter be termed the "interest-free allocation." The cost thus suballocated to the M&I water function shall be added to the cost allocated to the commercial power function, plus interest during construction for both, and the sum will hereinafter be termed the "interest-bearing allocation."

(c) During construction, simple interest at the rate of 3.342 percent per annum shall be charged on costs allocated to the interest-bearing function as adjusted by the Secretary (i.e., net disbursements reduced by contract holdbacks, revenues applied to construction cost, and nonreimbursable expenses financed from construction funds). The total amount of all interest thus accumulated through the construction period prior to the date of completion of each construction stage shall be added to and become part of the actual construction cost of each construction stage. Interest during construction shall not accrue during any period in which construction is deferred or postponed by the United States as a result of a national emergency, as determined by the Secretary, if authority to forego such interest exists or is made available to the Secretary.

9.2 Repayment Concepts.

(a) Costs suballocated to non-Indian irrigation water will be paid by the subcontractors to the Contractor on the basis of their ability to pay as determined by the Secretary.

(b) Costs allocated to commercial power and costs suballocated to M&I water use shall be combined and repaid with interest at a rate of 3.342 percent per annum on the unpaid balance.

(c) Reimbursable costs allocated to recreation and fish

and wildlife are anticipated to be covered by a separate contract and repaid by the beneficiaries thereof.

(d) Repayment of costs allocated to irrigation of Indian lands shall be governed by the provisions of Section 402 of the Basin Project Act.

(e) Repayment of the project will occur by construction stages, with each stage having a separate 50-year repayment schedule. Upon completion of each cost allocation study referred to in Subarticle 9.1(a), subsequent to the initial study associated with the first construction stage, the Contractor's repayment obligation and the obligation allocated to each construction stage will be adjusted based on the latest cost allocation study, and the Contractor will be provided with a revised repayment schedule for the project and each construction stage. The Contracting Officer will adjust previous principal and interest payments made by the Contractor to reflect the new repayment schedule. For each year where an adjustment in payments is necessary, there will be an over or underpayment which will accrue with interest at the rate of 3.342 percent per annum (compounded annually) to the adjustment date. If the adjustment indicates that the Contractor overpaid principal and interest, the Contractor shall be entitled to a credit against its next payments to the United States. Conversely, if the Contractor owes additional principal and interest to the United States, such amount shall be paid to the United States by the Contractor within 12 months of receipt of a statement therefor from the Contracting Officer. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

9.3 Contractor's Construction Cost Repayment Obligation.

(a) The Contractor's repayment obligation shall consist of the total cost allocated to the water supply and power functions plus OM&R during construction and interest during construction on costs allocated to the M&I water and power functions, but shall not include costs allocated to fish and wildlife and recreation, and costs associated with the delivery of water to entities other than the Contractor or subcontractors. Such entities shall include but not be limited to Indian tribes and councils in central Arizona receiving project water and the New Mexico recipients of water service from Hooker Dam or suitable alternative. The costs to be excluded shall be calculated as follows:

(i) Costs excluded from the Contractor's repayment obligation for New Mexico water service shall be determined by multiplying the project costs allocated to the water supply function by the ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to water users in Arizona in exchange for water delivered to users in New Mexico from or by means of project works, by the total quantity of Colorado River water projected to be delivered by the project throughout the overall repayment period.

(ii) The amount of other project costs which shall be excluded from the Contractor's repayment obligation shall be determined by multiplying the

project costs allocated to the water supply function by a ratio developed by dividing the quantity of project water projected to be delivered throughout the overall repayment period to entities other than the Contractor, the subcontractors, and those users in New Mexico to whom water has been made available through the construction of Hooker Dam or suitable alternative by the total quantity of project water projected to be delivered throughout the overall repayment period; Provided, That project water projected to be delivered to such users will be computed based on an assumption of full development not later than the year 2005.

(b) The costs determined under Subarticles 9.3(a)(i) and (ii) above shall be subtracted from the water supply costs obtained from the separable costs-remaining benefits procedure to determine the Contractor's water supply costs. The Contracting Officer shall suballocate the Contractor's water supply costs to each of the construction stages based on the ratios obtained by dividing the allocable cost of the construction stage by the allocable cost of the project (see Operation 1, Exhibit "A"). The water supply costs assigned to each construction stage are then further suballocated between irrigation and M&I water use in proportion to projected total water deliveries to each function over the 50-year repayment period of each construction stage (Operation 2, Exhibit "A"). The summarization of the suballocations to each construction stage determines the total water

supply cost to be assigned to irrigation and M&I water use (Operation 3, Exhibit "A"). To determine the Contractor's repayment obligation, the Contractor's water supply suballocation to irrigation and M&I water uses, and the power allocation from the separable costs-remaining benefits procedure, shall each be adjusted for any revenues received by the United States prior to the notice(s of completion and for any contributions received by the United States under the Plan 6 Funding Agreement for the features constructed in that stage, and for the 500 cubic feet per second of incremental capacity in the Granite Reef Aqueduct and pumping plants (see Article 9.7) to determine the net amount of each function assigned to the Contractor (Operation 4, Exhibit "A"). The Contractor's repayment obligation shall be the summation of the net amount for each function.

(c) Once the Contractor's estimated or final repayment obligation has been determined by the Contracting Officer, the obligation shall be allocated to each construction stage based on the ratio obtained by dividing the allocable cost of each construction stage by the allocable cost of the project. Each construction stage will have a separate 50-year repayment period. The repayment obligation for each stage will be divided into interest-bearing and interest-free components. The interest-free component shall be the amount allocable to irrigation purposes for the stage. The interest-bearing component will be the amount obtained by subtracting the irrigation allocation for the stage from the obligation for the stage. The principal payments for each stage shall be determined by applying the percentages in Subarticle 9.3(f) to the repayment obligation for each stage. The total payment for each stage for any year shall be equal to the principal payment plus interest at the rate of 3.342 percent

per annum on the unpaid interest-bearing component of the repayment obligation for each stage. For the water supply system, the portion of each principal payment which is made by the Contractor from irrigation revenues received by the Contractor each year will be used by the United States to reduce the interest-free obligation. The remaining portion of the principal payments made by the Contractor each year for the water supply system will be used by the United States to reduce the interest-bearing obligation, and once the interest-bearing obligation has been retired, the entire principal payment made by the Contractor will be applied by the United States toward the interest-free obligation. For the other construction stages, the entire principal payment made by the Contractor each year for such stages will be applied by the United States to reduce the interest-bearing obligation first, and once such obligation has been retired, to reduce the interest-free obligation.

(d) At 7-year intervals following the determination of the Contractor's repayment obligation for the water supply system, or at more frequent intervals if it becomes apparent to the Contracting Officer that a significant change in water use has or will occur, until such time as the interest-bearing obligation for each construction stage has been repaid, the Contracting Officer will re-estimate the proportions of total water deliveries to irrigation and M&I water use over the 50-year repayment period for each stage. At such intervals, the Contracting Officer will adjust the original interest-bearing and interest-free allocation for each stage based on the new estimates and recalculate all preceding interest payments. Differences between amounts owed and amounts paid by the Contractor shall be adjusted by the Contracting Officer, who shall apply a credit against the

Contractor's next payment due or notify the Contractor of the additional amount due, as the case may be. All such adjustments shall include interest at the rate of 3.342 percent per annum (compounded annually). Any additional payments required from the Contractor shall be made within 12 months of the Contractor's receipt of a statement from the Contracting Officer therefor. The Contractor may use the repayment reserve fund under Subarticle 10.3(b) hereof for any payment to the United States required as a result of the above adjustment.

(e) The Contracting Officer will notify the Contractor of (i) its estimated repayment obligation when construction of the first construction stage is substantially complete and upon completion of each subsequent construction stage, and (ii) the actual repayment obligation when the final construction stage has been completed, as determined by the Contracting Officer. In the event that the project ultimately consists only of the water supply system, New Waddell Dam, and Modified Roosevelt Dam, the Contractor's actual repayment obligation shall be limited to $2.0 billion. If prior to completion of construction of such features the Contracting Officer determines that the Contractor's repayment obligation for such features will exceed $2.0 billion, the Contracting Officer shall consult with the Contractor and continuation of construction will be contingent upon the execution of an amendatory contract to cover the increased repayment obligation. If construction of any other construction stage will result in an increase in the Contractor's repayment obligation by an amount equal to or less than the respective amount identified in Exhibit "B," which is attached hereto and made part of this contract, the Contractor's repayment ceiling may, after consultation with the Contractor, be increased by the

Contracting Officer by an amount equal to or less than the respective amount identified in Exhibit "B" by written notice thereof from the Contracting Officer to the Contractor. If construction of such other construction stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B," the Contracting Officer shall consult with the Contractor and the Contractor and the Contracting Officer shall agree upon one of the following courses of action prior to initiation of construction of such construction stage: (1) that additional repayment ceiling be made available from other construction stages, in which event the Contractor's repayment ceiling will be increased to the agreed-to amount by written notice from the Contracting Officer to the Contractor; or (2) that this contract be renegotiated to increase the Contractor's repayment ceiling; Provided, That these courses of action shall also apply in the event that, prior to completion of construction of such stage, the Contracting Officer determines that the construction of such stage will result in an increase in the Contractor's repayment obligation by an amount greater than the respective amount identified in Exhibit "B."

(f) Annual percentages of the repayment obligation for each construction stage shall be those set out in the following schedule or any revision thereof mutually agreed upon:

Repayment Year	Percent of Repayment Obligation (Annual)
1-7	1.0
8-14	1.3
15-21	1.6
22-28	2.0
29-35	2.6
36-42	2.7
43-49	2.7
50	2.7

(g) In the event that the Secretary contracts for delivery of non-project water under the provisions of Article 10.1, capital charges associated with such delivery shall be calculated, charged, and utilized in the same manner as capital charges deposited in the Development Fund pursuant to Article 8.18.

9.4 Payment of Contractor's Construction Cost Repayment Obligation.

(a) The Contractor shall make annual payments to the United States, to be credited to the Development Fund, which shall be sufficient, when combined with accruals from the other sources described in Section 403(f) of the Basin Project Act, the Hoover Power Plant Act of 1984, and other miscellaneous revenues, including but not limited to net wheeling charges, to effect repayment of the repayment obligation for each construction stage within a period of not more than 50 years beginning with the year following substantial completion of each construction stage. The Contractor's first payment shall be due on or before January 15 of the year following the year in which the Secretary announces the substantial completion of each construction stage. Annual payments thereafter shall be due on or before January 15 of each following year.

(b) The Contractor agrees to make annual payments calculated by the Secretary as follows:

(i) Calculate the annual principal payments required by the schedule in Subarticle 9.3(f) or any revision thereof for each construction stage.

(ii) Add to (i) the annual interest, at 3.342 percent, on the unpaid balance of the interest-bearing

allocation for each construction stage.

(iii) Determine the total amount of all interest and principal payments due for all construction stages.

(iv) Subtract therefrom the revenues estimated to be available from the Development Fund anticipating a zero balance at the end of each year in the Development Fund.

(v) Make adjustments for differences between estimated and actual revenues for the preceding year.

(c) On or before each December 15, beginning with December 15 of the year in which the Secretary notifies the Contractor of the substantial completion of the first construction stage, the Secretary will notify the Contractor of the amount of the annual payment due on the following January 15, which has been determined by the Secretary on the basis of the aforesaid calculation.

(d) The Contractor may make additional payments on the repayment obligation at any time subject to such terms and conditions as may be agreed upon by the Contractor and the Contracting Officer; Provided, however, That all interest due is paid at the same time, whereupon appropriate adjustments in the schedule of future payments will be made by the Secretary, who shall as promptly as possible give the Contractor written notice of the adjusted repayment schedule.

(e) It is understood and agreed that the Contractor shall be obligated for the payments set forth in Subarticle 9.4(a) hereof and that regardless of the delinquency or default in payment of any charges

due to the Contractor from any subcontractor, or a diminution in the water supply available to the Contractor, or regardless of any other reason, the Contractor shall complete repayment of each construction stage within a 50-year period beginning in the year following the announcement by the Secretary of substantial completion of such construction stage.

9.5 Commercial Power Rates. The Secretary will, consistent with applicable law, periodically review and provide for appropriate adjustments in the rates established for the sales of power and energy, revenues from which contribute to the Development Fund.

9.6 Other Costs Borne by the Contractor.

(a) In addition to the payments provided for in Article 9.4 hereof, and subject to the provisions of Subarticle 9.6(d) hereof, during such periods as the United States operates and maintains completed construction stages, the Contractor shall make advance payments for OM&R costs incurred by the United States. The United States will furnish the Contractor with an estimate in writing at least 6 months prior to substantial completion of construction of the water supply system, of the OM&R cost due from the Contractor to the end of the then current year, together with an estimate of such cost for the calendar year immediately following. Within a reasonable time of the receipt of said estimates, as determined by the Contracting Officer, the Contractor shall advance to the United States the payments for the estimated OM&R cost to the end of the then current year and without further notice or demand shall on December 15 of the then current year and on June 15 of the following year advance to the United States in equal semiannual installments the Contractor's share of the estimated cost, including supervision and

administrative expense for the OM&R of the water supply system. Advance payments shall be made in subsequent years by the Contractor to the United States on the basis of estimates to be furnished by the United States on or before November 15 preceding said subsequent year and the advances of said payments shall be due and payable in equal semiannual payments on the following December 15 and June 15. Said OM&R costs are the total annual OM&R costs of completed construction stages which are allocated to the irrigation and M&I water supply functions less (i) the costs described in Subarticle 9.6(c) hereof, and (ii) an amount determined by multiplying the total of said annual costs by the ratio obtained by dividing the estimated amount of project water projected to be delivered in the subsequent year to entities other than the Contractor, the subcontractors, and those entities in New Mexico to which project water will be made available from Hooker Dam or suitable alternative, by the total amount of project water estimated to be delivered for use in that year.

(b) Differences between actual OM&R costs and the estimated costs shall be determined by the Contracting Officer and shall be adjusted in next succeeding estimates; Provided, however, That if in the opinion of the Contracting Officer the amounts advanced by the Contractor for any year are likely to be insufficient to pay the above-mentioned OM&R costs during such year, additional and sufficient sums of money shall be paid forthwith by the Contractor to the United States upon notice thereof and demand therefor by the Contracting Officer; Provided, further, That the United States will give Contractor reasonable notice in advance of any such deficiency.

(c) The Contractor's obligation to pay said OM&R costs

of completed construction stages will be reduced to the extent that project water is made available for use in New Mexico following completion of Hooker Dam or suitable alternative. Said reduction will be in the proportion which the quantity of project water projected to be delivered to water users in Arizona, in exchange for Gila River system waters delivered to water users in New Mexico from or by means of project works, bears to the total quantity of Colorado River water projected to be delivered to the project that year.

(d) In the event that responsibility for OM&R of project facilities is transferred to and assumed by the Contractor, the Contractor shall be relieved of the obligation to make OM&R payments associated with such facilities under Subarticle 9.6(a) of this contract. In that event, the United States shall pay or provide for payment of OM&R costs associated with delivery of water to entities other than the Contractor and the subcontractors. Such costs shall be computed in accordance with Subarticle 9.6(a) of this contract. If the Contractor does not receive payment in advance for such costs, the Contractor shall have no obligation to deliver such water.

(e) During the Hoover Dam cost-repayment period, the Contractor shall pay to the United States the sum of $0.25 for each acre-foot of water pumped from Lake Havasu for miscellaneous and M&I water purposes as determined by the Contracting Officer. The quantity of water pumped for such purposes will be determined by the Contracting Officer at the end of each calendar year and the Contractor notified of the amount due by March 1 of each subsequent year. Payment shall be due on May 1 following notification. Said payment shall be credited to the Colorado River Dam Fund

established by Section 2 of the Boulder Canyon Project Act.

9.7 Repayment of Costs of Excess Capacity in Granite Reef Aqueduct. The costs of providing any capacity in the Granite Reef Aqueduct and pumping plants in excess of 2,500 cubic feet per second shall be repaid by Contractor from funds available to Arizona pursuant to the provisions of Section 403(f) of the Basin Project Act, or by funds from sources other than the Development Fund.

9.8 Ad Valorem Taxes, Assessments, Tolls, and Other Charges. Within the legal limits available to it, the Contractor shall levy ad valorem taxes upon the taxable property within the service area of the Contractor at rates determined necessary by the Contractor to raise funds which, together with the revenues from the sale of water and such financial assistance from the Development Fund as the Secretary determines is available therefor, are sufficient to meet the obligations of the Contractor to make in full all payments to the United States on or before the date such payments become due and to meet its other obligations under this contract.

9.9 Continuation of Payments After Project Payout. Following payment to the United States of the Contractor's final payment for the last construction stage, the Contractor shall continue to make annual payments to the United States to be credited to the Development Fund in amounts equal to the average annual principal payment for the project during the overall repayment period. In the event that no augmentation project, as contemplated in the Basin Project Act, has been authorized or is under active consideration by the Congress at the time project construction costs have been repaid in full, payments under this formula will be not required; Provided, however, That payments will commence after repayment of the

project costs pursuant to the formula, or any adjustment thereof agreed to by the parties, at such time as an augmentation project is authorized by Congress and the costs thereof allocated to the Contractor are determined by the Secretary.

9.10 Defaults.

(a) The Contractor shall pay a penalty on payments, installments or charges which become delinquent, computed at the rate of 1 percent per month on the amount of such delinquent payments, installments, or charges from and after the date when the same become due until paid.

(b) No water shall be furnished to the Contractor during any period in which the Contractor may be in arrears more than 12 months in the payments to the United States required by Article 9.4 hereof.

(c) All rights of action for breach of this contract are reserved to the United States as provided by Federal law.

10. GENERAL PROVISIONS

10.1 Other Contracts. The Secretary reserves the right to contract directly with other water using entities concerning water supply through project facilities. In the event this occurs, the provisions of Article 8.17 hereof shall be applicable.

10.2 Title to Project Works. Title to all water supply system works and all project facilities constructed pursuant to the Basin Project Act and this contract shall be and remain in the United States until otherwise provided by Congress.

10.3 Reserve Funds.

(a) (1) Commencing with notice of transfer of OM&R for the Granite Reef Aqueduct, including the Havasu Pumping Plant, the Contractor

shall accumulate and maintain an emergency OM&R reserve fund, which the Contractor shall keep available to meet costs incurred during periods of interruption of water service.

(ii) The Contractor shall accumulate the reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $400,000 in any year in which the fund balance is less than $4,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for such purposes as those identified in Subarticle 10.3(a)(iv) hereof. Such annual deposits and the accumulation of interest and dividends to the reserve fund shall continue until $4,000,000 is accumulated. Interest and dividends accruing to fund balances shall be added to the fund in any year when the fund balance is greater than $4,000,000; Provided, That in no event shall the fund be increased to an amount greater than the actual amount of fixed OM&R costs for the preceding year as mutually determined by the Contractor and the Contracting Officer. Any balance in the fund in excess of the amount of fixed OM&R costs for the previous year shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted in consideration of the risk and uncertainty stemming from the size and complexity of the project, the size of the annual OM&R budget, additions to, deletions from, or changes in project works, or OM&R costs not

contemplated when this contract was executed.

(iv) The Contractor may make expenditures from such reserve fund only for meeting unforeseen and extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs (in situations where recurrence of severe operation and maintenance problems can be avoided or eliminated). Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) During any period in which any of the project works are operated and maintained by the United States, the reserve fund shall be available for like use by the United States.

(vi) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement indicating the principal and accumulated interest in the emergency OM&R reserve fund as of December 31 of the preceding year.

(b) (i) No later than 1 year following the Contractor's last construction advance under the Plan 6 Funding Agreement, the Contractor shall accumulate and maintain a repayment reserve fund to help assure payments to the United States under this contract.

(ii) The Contractor shall accumulate such reserve fund with annual deposits, including interest and dividends accruing to fund balances or holdings, of not less than $4,000,000 in any year in which the fund balance is less than $40,000,000. The fund shall be invested in a Federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for the

purpose for which it was established. Such annual deposits and the accumulation of interest to the reserve fund shall continue until $40,000,000 is accumulated. Any balance in the fund in excess of $40,000,000 shall be considered to be the general funds of the Contractor and available for use as such.

(iii) Upon mutual agreement between the Contractor and the Contracting Officer, the amount to be accumulated and maintained in the reserve fund provided for in this Subarticle may be adjusted.

(iv) Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement.

(v) On or before February 1 of each year, the Contractor shall provide to the Contracting Officer an annual statement of the principal and accumulated interest in the repayment reserve fund as of December 31 of the preceding year.

10.4 Recreational Use of Water Facilities.

(a) The enhancement of recreational opportunities in connection with the project works authorized pursuant to Title III of the Basin Project Act shall be in accordance with the provisions of the Federal Water Project Recreation Act, 79 Stat. 213, dated July 9, 1965, except as provided in Subarticle 10.4(b) hereof.

(b) Recreational development at Orme Dam and Reservoir shall be governed by the provisions of Section 302(d) of the Basin Project Act.

10.5 Confirmation of Contract.

(a) The Contractor, after the execution of this contract,

shall promptly seek to secure a decree of a court of competent jurisdiction of the State of Arizona confirming the execution of this contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor. This contract shall not be binding on the United States or the Contractor until such final decree has been entered.

(b) This contract shall be indivisible for purposes of validation and shall not be binding on the United States or the Contractor unless validated pursuant to the provisions of Subarticle 10.5(a) hereof in each and all of its terms and conditions.

10.6 Rules, Regulations, and Determinations.

(a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Reclamation Law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation Law.

(b) The Contracting Officer, after an opportunity has been offered to the Contractor for consultation, shall have the right to make rules, regulations, and determinations consistent with the provisions of this contract, the laws of the United States and the State of Arizona, including, without limitation, rules, regulations, and determinations relative to maximizing project benefits from pumping from Lake Havasu, the rate and schedule of pumping therefrom and the rate and schedule of pumping at the Granite Reef pumping plants, to add to or modify said rules, regulations, and determinations as may be deemed proper and necessary to

carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The Contractor and each subcontractor shall observe such rules, regulations, and determinations and each subcontract shall so provide.

(c) Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor and shall be conclusive upon the parties.

10.7 Books, Records, and Reports. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: the Contractor's financial transactions, water supply data, project operation, maintenance and replacement logs, project land and right-of-way use agreements, and other matters specifically relating to this contract that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

10.8 Notices. Any notice, demand, or request authorized or

required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, and on behalf of the United States, when mailed, postage prepaid, or delivered to the General Manager of the Contractor, 23636 North 7th Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

10.9 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

10.10 Changes in Contractor's Organization. While this contract is in effect, no change shall be made in the Contractor's organization, by exclusion of lands, by dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written consent; Provided, however, That approval is hereby given to the inclusion of other counties as part of Contractor's service area, except, however, that the United States shall not be required, under this contract, to construct project facilities to serve lands within said additional counties.

10.11 Assignment Limited--Successors and Assigns Obligated. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this

contract or any part or interest therein shall be valid until approved in writing by the Contracting Officer.

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

10.13 Equal Opportunity. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment

without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Contracting Officer, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

10.14 Compliance With Civil Rights Laws and Regulations.

(a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures

necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

10.15 Officials Not to Benefit. No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

11. STATUS OF DECEMBER 15, 1972 CONTRACT

Upon judicial confirmation of this contract, the December 15, 1972 contract entitled "Contract Between the United States and the Central Arizona Water Conservation District For Delivery of Water and Repayment of Costs of the Central Arizona Project" (Contract No. 14-06-W-245), shall be superseded and replaced by this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
Assistant Secretary-Water and Science
Department of the Interior

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

ATTEST:

_____
Secretary

By _____
President

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 1 SUBALLOCATION OF CONTRACTOR'S WATER SUPPLY COSTS TO CONSTRUCTION STAGES:

Construction Stage	Allocable Cost ($M)	Percentage	Water Supply Cost ($M)
Water Supply System	1,500	71%	1,280
New Waddell	300	14%	256
Cliff Alternative	100	5%	85
Tucson Term. Storage	60	3%	51
Hooker Alternative	50	2%	43
Buttes	100	5%	85
Total	2,110	100%	1,800

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 2 SUBALLOCATION OF WATER SUPPLY COST:

Construction Stage	Allocable Cost ($M) Construction	IDC	Water Distribution (%) Irrigation	M&I
Water Supply System	1,280	200	58%	42%
New Waddell	256	40	54%	46%
Cliff Alternative	85	10	54%	46%
Tucson Term. Storage	51	10	53%	47%
Hooker Alternative	43	10	50%	50%
Buttes	85	10	50%	50%
Total	1,800	280	100%	

	Construction Cost Distribution ($M) Irrigation	M&I	IDC Cost Distribution ($M) Irrigation	M&I
Water Supply System	742	538	116	84
New Waddell	138	118	22	18
Cliff Alternative	46	39	5	5
Tucson Term. Storage	27	24	5	5
Hooker Alternative	21	21	5	5
Buttes	43	43	5	5
Total	1,017	783	158	122

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 3 DETERMINATION OF TOTAL WATER SUPPLY COST:

	Total Cost Distribution ($M)		
	Irrigation	M&I	Total
Water Supply System	742	622	1,364
New Waddell	138	136	274
Cliff Alternative	46	44	90
Tucson Term. Storage	27	29	56
Hooker Alternative	21	26	47
Buttes	43	48	91
Total	1,017	905	1,922

Irrigation = Irrigation construction cost
M&I = M&I construction cost + M&I IDC

EXHIBIT "A"
DETERMINATION OF CAWCD WATER SUPPLY COST BY STAGE
EXAMPLE ONLY

OPERATION 4 ADJUSTMENTS TO ALLOCATED COST:

	Irrigation Cost ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)	M&I ($M)	Interim Operations ($M)	Local Funding ($M)	500 CFS Granite Reef ($M)
Water Supply System	742	-4		33	622	10		32
New Waddell	138		-45		136		-135	
Cliff Alternative	46				44		-30	
Tucson Term. Storage	27				29			
Hooker Alternative	21				26			
Buttes	43				48			
Total	1,017	-4	-45	33	905	10	-165	32

	Power Cost ($M)	Interim Operations ($M)	Total ($M)
Water Supply System	328	-100	1,663
New Waddell	61		155
Cliff Alternative	20		80
Tucson Term. Storage	12		68
Hooker Alternative	9		56
Buttes	19		110
Total	449	-100	2,132

EXHIBIT "B"

CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD) REPAYMENT CEILING (Billions of Dollars)

		Remaining Potential Stages				
	Water Supply System, New Waddell, and modified Roosevelt Dams	Tucson Terminal Storage	Cliff Dam Alternative	Hooker Dam Alternative	Buttes Dam	Total
Amount allocable to CAWCD repayment ceiling based on October 1988 prices.	$1.681	$.058	$.060	$.035	$.100	$.253
Inflation (4%) on features remaining to be completed, plus an amount for unforeseen contingencies (.82 of the inflation component)[1]	.100	.032	.035	.047	.133	$.247
Additional costs which could be allocated to CAWCD if the Gila River Indian Community does not take CAP water	.259	----	----	----	----	----
	----	----	----	----	----	----
Total	$2.040	$.090	$.095	$.082	$.233	$.500
Rounded	$2.000					$.500

[1] Inflation calculations based on the assumption that Tucson terminal storage and the Cliff Dam alternative are completed in 1995, and that the Hooker Dam alternative and Buttes Dam are completed in 2002.

Exhibit "B"

Assignment among RWCD, CAWCD and The United States
(See Exhibit "12.3." to Agreement)

EXHIBIT "12.3"

RWCD ASSIGNMENT TO CITIES

ASSIGNMENT

THIS AGREEMENT, dated as of February 12, 1988, is made and entered into by and among the United States of America acting through the Secretary of the Interior, the Central Arizona Water Conservation District, the Roosevelt Water Conservation District, the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa and Phoenix, and the Arizona Town of Gilbert.

R E C I T A L S

A. The United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members.

B. The foregoing settlement agreement requires the assignment by the Roosevelt Water Conservation District to the Cities and Town participating in the settlement of a portion of the agricultural water supply available to Roosevelt Water Conservation District from the Central Arizona Project.

C. The settlement agreement further requires the Secretary of the Interior, in certain events, to make available to the Cities and Town participating in the settlement a portion of the

agricultural water supply otherwise available from the Central Arizona Project.

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix and the Town of Gilbert.

(b) "City" shall mean any one of the Cities.

(c) "Contractor" shall mean the Central Arizona Water Conservation District.

(d) "Repayment Contract" shall mean the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 15, 1972 (Contract No. 14-06-W-245), and any amendment or revision thereof.

(e) "Secretary" and "Contracting Officer" shall mean the Secretary of the Interior or his duly authorized representative.

(f) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America; the Salt River Pima-Maricopa Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District.

(g) "Subcontract" shall mean the Subcontract among the United States, the Central Arizona Water Conservation District, and the Roosevelt Water Conservation District, Providing for Water Service, Central Arizona Project, dated [to be supplied] (Contract No. [to be supplied]).

(h) "Subcontractor" shall mean the Roosevelt Water Conservation District.

All other terms used in this Agreement which are defined in the Repayment Contract or the Subcontract shall have the meanings ascribed to them in the Repayment Contract and the Subcontract.

2. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, and for each Year thereafter until the term of the Subcontract expires, Subcontractor hereby assigns to the Cities an amount of Project Water, to be taken from Subcontractor's annual entitlement to Agricultural Water under Article 4.13 of the Subcontract, equal to the lesser of (a) 5,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, or (b) such amount of Project Water as is available from Subcontractor's annual entitlement to Agricultural Water after first providing for delivery to the Subcontractor, at the Subcontractor's Project turnout, of 8,000 acre-feet of Agricultural Water.

3. (a) If and when, as a result of a reduction in the acreage of eligible lands in Subcontractor's service area,

Subcontractor's entitlement to Agricultural Water under Article 4.13 of its Subcontract is insufficient to provide for the delivery to the Cities at the Cities' Project turnouts of a total amount of 3,000 acre-feet of Project Water (after first providing for the delivery of Subcontractor's entitlement to Agricultural Water as determined in accordance with subparagraph (b) of this Paragraph) in a Year in which the total supply of Agricultural Water available for delivery from the Project is 450,000 acre-feet or more, the Secretary shall thereafter make available for delivery to the Cities from the total supply of Agricultural Water otherwise available for delivery from the Project in each Year an amount of Project Water equal to the difference between (i) 3,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, and (ii) the amount of Project Water available to the Cities as a result of the assignment made in Paragraph 2 of this Agreement.

(b) If and when the provisions of subparagraph (a) of this Paragraph are implemented, Subcontractor's entitlement (i) to 8,000 acre-feet of Agricultural Water under subparagraph (b) of Paragraph 2 of this Agreement or (ii) to such lesser amount of Agricultural Water as may be determined in conformance with the provisions contained in subparagraph (d) of Paragraph 2 of this Agreement shall be subject to reduction in an amount equal to Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract multiplied by the amount of Agricultural Water made available by the Secretary for delivery to the Cities pursuant to subparagraph (a) of this Paragraph.

(c) Attached hereto as Appendix A are examples of how Paragraphs 2 and 3 of this Agreement are intended to operate under various conditions.

4. (a) Project Water made available to the Cities pursuant to Paragraph 2 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	972 acre-feet per Year;
City of Glendale	=	682 acre-feet per Year;
City of Scottsdale	=	23 acre-feet per Year;
City of Tempe	=	23 acre-feet per Year;
City of Mesa	=	627 acre-feet per Year;
City of Phoenix	=	1,136 acre-feet per Year;
Town of Gilbert	=	1,537 acre-feet per Year;
TOTAL	=	5,000 acre-feet per Year.

(b) Project Water made available to the Cities pursuant to Paragraph 3 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	583 acre-feet per Year;
City of Glendale	=	409 acre-feet per Year;
City of Scottsdale	=	14 acre-feet per Year;
City of Tempe	=	14 acre-feet per Year;
City of Mesa	=	376 acre-feet per Year;
City of Phoenix	=	682 acre-feet per Year;
Town of Gilbert	=	922 acre-feet per Year;
TOTAL	=	3,000 acre-feet per Year.

(c) Prior to the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted by mutual agreement of such Cities. On and after the enforceability date of the Settlement Agreement, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted only by mutual agreement of such Cities, the Contractor, and the United States.

(d) In the event this Agreement shall become effective and any City ("designating City") entitled to receive water hereunder is unable to take delivery of such water by virtue of not having constructed a treatment plant capable of taking deliveries of water from the Central Arizona Project, the designating City shall in writing designate one or more Cities which are also parties to this Agreement to act as the interim recipients ("interim recipient") of the designating City's water, and water made available to the designating City under this Agreement shall be delivered by Contractor to the interim recipient(s) until such time as the designating City's treatment plant is completed and ready to take delivery of and treat deliveries of water from the Central Arizona Project. The designating City shall notify Contractor and Subcontractor of any such designation and shall also provide Contractor and Subcontractor with copies of any agreement between the designating City and the interim recipient(s). Any

such agreement shall not be inconsistent with any provisions of the Repayment Contract, the Subcontract, or this Agreement.

5. Notwithstanding anything in the Repayment Contract or the Subcontract to the contrary, Project Water made available to the Cities pursuant to this Agreement may be used for any M&I Water uses including but not limited to ground water recharge.

6. Notwithstanding any schedule or other instruction to the contrary, Project Water made available to the Cities pursuant to this Agreement, including any water delivered under a designation agreement entered into pursuant to Paragraph 4(d) hereof, shall be accounted for and treated by the Contractor and the Contracting Officer as having been scheduled for delivery by the Cities, and delivered to the Cities, prior to the delivery of any portion of the Cities' entitlements to Project M&I Water under the Cities' M&I Water service subcontracts (City of Chandler, Contract No. 5-07-30-W0070; City of Glendale, Contract No. 5-07-30-W0062; City of Scottsdale, Contract No. 5-07-30-W0063; City of Tempe, Contract No. 5-07-30-W0061; City of Mesa, Contract No. 5-07-30-W0060; City of Phoenix, Contract No. 5-07-30-W0059; Town of Gilbert, Contract No. [to be supplied]), prior to the delivery of any portion of the Cities' entitlements to under the Cities' Project Water Lease Agreements (Exhibits "3.m.1" through "3.m.7" of the Settlement Agreement), and prior to the delivery of any portion of the Cities' entitlements to "Colorado River water" under and as defined in the Cities' River Water Exchange Contracts (Exhibits "3.h.1" through "3.h.7" of the Settlement Agreement).

7. Except as otherwise provided in Paragraph 11 hereof, the Cities shall make payment for Project Water made available to the Cities pursuant to this Agreement in accordance with the terms and conditions of contracts to be entered into among the United States, the Contractor, and each of the Cities, the forms of which are attached as Exhibits "3.h.1" through "3.h.7" to the Settlement Agreement.

8. Except as provided in Paragraph 10 of this Agreement, nothing in this Agreement shall relieve the Subcontractor of its obligation to make the payments required in the Subcontract.

9. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract, the costs associated with the delivery of Project Water to the Cities pursuant to this Agreement shall be nonreimbursable, and such costs shall be excluded from the Contractor's repayment obligation.

10. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the Subcontractor's obligation to pay Agricultural Water service capital charges pursuant to Subarticle 5.2(a) of the Subcontract shall be reduced in each Year by an amount equal to $2.00 per acre-foot, or such amount as may be determined by the Contracting Officer based on payment capacity determinations provided for in the Repayment Contract, multiplied by the total amount of Project Water assigned by the Subcontractor

to the Cities pursuant to Paragraph 2 of this Agreement and scheduled for delivery by the Cities in such Year.

11. (a) Each City agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any operation, maintenance, and replacement costs associated with Project Water made available for delivery to the City pursuant to Paragraph 2 of this Agreement. Each City further agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any Agricultural Water service capital charges associated with any Project Water assigned by the Subcontractor to the City pursuant to Paragraph 2 of this Agreement. The liability of each City under this Paragraph 11(a) shall be its sole and separate obligation, and shall not be an obligation joint and several with any other City or Cities.

(b) In the event any City shall default and fail to indemnify Contractor or Subcontractor as required in Paragraph 11(a) hereof, then such City's entitlement to water under this Agreement shall be forfeit and such entitlement shall be redistributed pro rata to each of the other Cities which are parties to this Agreement. The redistribution of water shall be effected by means of a notice from Subcontractor and Contractor, if either has not been indemnified, to the defaulting City and to the other Cities which are parties to this Agreement, and such redistribution shall be effective on the thirty-fifth day after the notice is given. Within ten days of receiving the notice of re-distribution, each City other than the defaulting City shall pay to

Subcontractor or Contractor, as the case may be, its share of the amount the defaulting City shall have failed to pay, which share shall be in the proportion which the amount of water redistributed to such City bears to the total amount of water redistributed. In the event any City to which water is redistributed shall fail to make the payment hereby required to be made within the time herein prescribed, Subcontractor or Contractor, as the case may be, shall be free to redistribute such City's entitlement to redistributed water to any other City which makes such payment and which is also a party to this Agreement.

12. (a) Subcontractor's entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be 5.98 percent of the total supply of Agricultural Water available for delivery from the Project (subject to reduction by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer) unless, prior to the issuance by the Secretary of Notice of Completion of the Water Supply System, Subcontractor notifies the Contractor and the Contracting Officer that it wishes to reduce its entitlement to a lesser percentage of the total Agricultural Water supply. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement under Subarticle 4.13(a) of the Subcontract shall be as stated in the notice from the Subcontractor to the Contractor and the Contracting Officer.

(b) Notwithstanding the foregoing, the Contractor and the Contracting Officer may at any time prior to the issuance of

such Notice of Completion require the Subcontractor to specify its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract by notifying the Subcontractor that it must specify such entitlement within six months of the date that the Contractor and the Contracting Officer issue such notice. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be as specified by the Subcontractor in response to the notice issued by the Contractor and the Contracting Officer. In the event the Subcontractor fails to make such specification within the time required, Subcontractor's entitlement shall be fixed at 5.98 percent of the total Agricultural Water supply (subject to adjustment by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer).

(c) At the time the Subcontractor notifies the Contractor and the Contracting Officer of its percentage entitlement pursuant to subparagraph (a) of this Paragraph, or at the time the Subcontractor specifies its entitlement pursuant to subparagraph (b) of this Paragraph, Subcontractor may relinquish:

(i) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(a) of the Subcontract to be made available to the Subcontractor as a result of deductions made in other subcontractors' entitlements to Agricultural Water to reflect removal of eligible lands from agricultural use; and

(ii) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(b) of the Subcontract to be made available to the Subcontractor as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available;

Provided, however, that the Subcontractor shall relinquish at least 5,000 acre-feet, or the percentage of the projected Agricultural Water supply that most closely approximates 5,000 acre-feet, of any additional Agricultural Water entitlement to which the Subcontractor would be entitled under Subarticle 4.13(b) of the Subcontract as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available.

(d) Subject to the requirements and limitations of this Paragraph 12, Subcontractor may select its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract based upon its own evaluation of potential Agricultural Water supplies and its own requirements; Provided, however, that said Subcontractor's entitlement to Agricultural Water shall in no event exceed the lesser of 5.98 percent or the percentage entitlement determined by dividing the number of acres of eligible lands in the Subcontractor's service area by the total number of acres of eligible lands in the service areas of all subcontractors of Agricultural Water, as determined by the Contracting Officer.

13. Except as provided in this Agreement, all terms and conditions of the Subcontract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

Attest:

_____
Secretary

CENTRAL ARIZONA WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: George W. Barr
Title: President

Attest:

_____
Secretary

ROOSEVELT WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: Mark W. Dobson
Title: President

Attest:

_____
Clerk

Approved as to Form:

_____
City Attorney

CITY OF PHOENIX, a Municipal corporation, MARVIN A. ANDREWS, City Manager

By _____

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF SCOTTSDALE, an Arizona municipal corporation

By

Name: Herbert R. Drinkwater

Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF GLENDALE, an Arizona municipal corporation

By

Name: George R. Renner

Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF MESA, an Arizona municipal corporation

By

Name:

Title:

Attest:

Clerk

Approved as to Form:

City Attorney

CITY OF TEMPE, an Arizona municipal corporation

By

Name: Harry E. Mitchell

Title: Mayor

. . .

Attest:

Clerk, Acting

Approved as to Form:

City Attorney

CITY OF CHANDLER, an Arizona municipal corporation

By

Name: Richard Dugan
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

TOWN OF GILBERT, an Arizona municipal corporation

By

Name: Steve M. Berman
Title:

. . .

APPENDIX A

The following are five examples of how Paragraphs 2 and 3 of the Assignment are intended to operate under varying water supply conditions and assuming varying entitlements to CAP Agricultural Water for Roosevelt Water Conservation District ("RWCD") under Subarticle 4.13(a) of RWCD's CAP Agricultural Subcontract.

EXAMPLE 1

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 1,000,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 5.98%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 59,800 AF.

(5.98% X 1,000,000 AF - 59,800 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 59,800 AF - 8,000 AF = 51,800 AF

5. RWCD's balance = 54,800 AF.

EXAMPLE 2

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 13,005 AF.

(2.89% X 450,000 AF = 13,005 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 13,005 AF - 8,000 AF = 5,005 AF.

5. RWCD's balance = 8,005 AF.

EXAMPLE 3

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,890 AF.

(2.89% X 100,000 AF = 2,890 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment = 0 (because RWCD's entitlement is sufficient to provide for delivery to the Cities of at least 3,000 AF in any year in which the total supply is 450,000 AF or more -- See Example 2).

EXAMPLE 4

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 10,980 AF.
(2.44% X 450,000 AF - 10,980 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:
   (a) 5,000 AF, or
   (b) 10,980 AF - 8,000 AF = 2,980 AF.

5. Cities' entitlement under Paragraph 3 of the Assignment =
   (a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area:
   Cities' entitlement = 3,000 AF - 2,980 AF = 20 AF
   CITIES' TOTAL = 3,000 AF
   (b) IF 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0
   CITIES' TOTAL = 2,980 AF

EXAMPLE 5

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,440 AF.

(2.44% X 100,000 AF = 2,440 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment:

(a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement = 3,000 AF.

(b) RWCD's contribution = 2.44% X 3,000 AF = 73 AF.

(c) RWCD's net entitlement = 2,440 AF - 73 AF = 2,367 AF.

BUT

(d) If 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0.

Exhibit "C"

Total CAP Water Available to M&I: 443,067 A

SRPMIC Agreement Water Calculations

• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	2,088	
Total Agreement Water Credit:	19,912	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	462,979	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	69.64%	

CAP Water Available to M&I: 443,067 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	**Delivery Without Agreement (AF)**	**Delivery With Agreement* (AF)**
Avondale	4,099	0.64%	0.00%	0	**2,833**	**2,855**
Peoria	17,849	2.79%	0.00%	0	**12,338**	**12,430**
Glendale	14,083	2.20%	13.64%	3,545	**9,735**	**12,276**
Phoenix	113,882	17.83%	22.73%	5,909	**78,721**	**83,422**
Scottsdale	19,702	3.08%	0.45%	118	**13,619**	**13,803**
Chaparral City	6,978	1.09%	0.00%	0	**4,824**	**4,859**
Prescott	7,127	1.12%	0.00%	0	**4,927**	**4,963**
Payson	4,995	0.78%	0.00%	0	**3,453**	**3,478**
Tempe	4,315	0.68%	0.45%	118	**2,983**	**3,087**
Mesa	29,527	4.62%	12.55%	3,262	**20,411**	**22,834**
Apache Jct	6,000	0.94%	0.00%	0	**4,147**	**4,178**
Chandler	3,668	0.57%	19.45%	5,056	**2,536**	**6,075**
Gilbert	7,235	1.13%	30.74%	7,991	**5,001**	**10,604**
Casa Grande	8,884	1.39%	0.00%	0	**6,141**	**6,187**
Tucson	148,420	23.23%	0.00%	0	**102,595**	**103,359**
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

Total CAP Water Available to M&I:	218,338	A
SRPMIC Agreement Water Calculations		
• Total Agreement Water Purchased:	22,000	
• Losses Attributable to Agreement Water:	3,496	
Total Agreement Water Credit:	18,504	B
Sum of SRPMIC Agreement Entitlements:	26,000	C
Total Water Available to M&I (A + B):	236,842	
Total of M&I Entitlements (C + 638,823):	664,823	
Percent of Total M&I Entitlements Avail for Delivery (A + B)/(C + 638,823):	35.62%	

CAP Water Available to M&I: 218,338 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	**Delivery Without Agreement (AF)**	**Delivery With Agreement* (AF)**
Avondale	4,099	0.64%	0.00%	0	**1,385**	**1,460**
Peoria	17,849	2.79%	0.00%	0	**6,031**	**6,359**
Glendale	14,083	2.20%	13.64%	3,545	**4,759**	**6,280**
Phoenix	113,682	17.83%	22.73%	5,909	**38,481**	**42,675**
Scottsdale	19,702	3.08%	0.45%	118	**6,657**	**7,061**
Chaparral City	6,978	1.09%	0.00%	0	**2,358**	**2,486**
Prescott	7,127	1.12%	0.00%	0	**2,408**	**2,539**
Payson	4,995	0.78%	0.00%	0	**1,688**	**1,779**
Tempe	4,315	0.68%	0.45%	118	**1,458**	**1,579**
Mesa	29,527	4.62%	12.55%	3,262	**9,977**	**11,681**
Apache Jct	6,000	0.94%	0.00%	0	**2,027**	**2,137**
Chandler	3,668	0.57%	19.45%	5,056	**1,239**	**3,108**
Gilbert	7,235	1.13%	30.74%	7,991	**2,445**	**5,424**
Casa Grande	8,884	1.39%	0.00%	0	**3,002**	**3,165**
Tucson	148,420	23.23%	0.00%	0	**50,151**	**52,674**
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

EXHIBIT "3.j"

SRPMIC CAP Water Delivery Contract Amendment

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

FIRST AMENDMENT TO CENTRAL ARIZONA PROJECT INDIAN WATER DELIVERY CONTRACT BETWEEN THE UNITED STATES AND THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

1. PREAMBLE:

THIS AMENDMENT TO CONTRACT, made as of the 12th day of February, 1988, in pursuance of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, P.L. 100-512, 102 Stat. 2549, is between the United States of America (hereafter "United States") and the Salt River Pima-Maricopa Indian Community (hereafter "Contractor") located on the Salt River Reservation, Arizona.

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

WHEREAS, the United States and the Contractor entered into a contract dated December 11, 1980, pursuant to which the United States agreed to deliver Central Arizona Project water in an amount not in excess of 13,300 acre-feet yearly for a term of 50 years subject to renewal (hereafter "CAP Delivery Contract");

WHEREAS, the United States, the Contractor, the State of Arizona, the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert, and the Central

Arizona Water Conservation District, have entered into an Agreement dated as of February 12, 1988 (the "SRPMIC Agreement"), for the settlement of water claims in the Salt River Valley; and

WHEREAS, the SRPMIC Agreement provides in Paragraph 19.0 that the Contractor will lease for a term of 99 years commencing on January 1, 2000, and ending on December 30, 2098, to the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, and Phoenix, and the Arizona Town of Gilbert, all of the water to which the Contractor is entitled under the CAP Delivery Contract; and

WHEREAS, the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Contractor's rights to 13,300 acre-feet of Project Water to the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, and Phoenix, and the Arizona Town of Gilbert; and

WHEREAS, the parties intend by this First Amendment to the CAP Delivery Contract to amend the CAP Delivery Contract as required by the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, P.L. 100-512;

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements between the parties, it is agreed as follows:

3. Paragraph 4.2 of the CAP Delivery Contract is amended in full to read as follows:

> "4.2 Term of Contract. This contract shall become effective upon its execution and shall remain in effect until and including

December 31, 2098; Provided, that this contract may be renewed upon written request by Contractor upon terms and conditions of renewal to be agreed upon not later than one year prior to the expiration of this Contract."

4. Paragraph 4.3(e) shall be amended by adding a new 4.3(e)(3) as follows:

"(3) The Contractor may enter into Project Water Lease Agreements with the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona Town of Gilbert for terms commencing January 1, 2000, and ending December 30, 2098, in accordance with the Project Water Lease Agreements entered into among the Contractor, the Lessees and the United States. The United States shall deliver Contractor's Project Water to the Lessees as provided in the Project Water Lease Agreements with such Lessees; however, neither the Secretary nor CAWCD shall be obligated to make such deliveries if, in the judgment of CAWCD or the Secretary, delivery or schedule of deliveries to the Lessees would limit deliveries of CAP water to other CAP Subcontractors to a degree greater than would deliveries to Contractor. To the extent that the provisions of the Project Water Lease Agreements are contrary to the provisions of this contract, the provisions of the Project Water Lease Agreements shall control."

5. Paragraph 6 shall be amended by adding a new Paragraph 6(e) as follows:

"(e) The United States shall not impose upon the Contractor the OM&R charge set forth in Section 7(b) or any other charge with respect to the Project Water delivered or required to be delivered to a Lessee pursuant to Paragraph 4.3(e)(3) hereof."

6. Section 5 shall be amended by adding a new Section 5(e) as follows:

"(e) Substitute Water During Lease. No Substitute Water Contract shall be effective

during the term of a lease established by a Project Water Lease Agreement unless the Lessee gives written approval of such Substitute Water Contract."

7. Section 9 shall be amended by adding a new Section 9.11 as follows:

"9.11 Amendments and Modifications. No amendment or modification of this Contract shall be made which would impair the interests of the Lessees under the Project Water Agreements unless the Lessees give written approval for such amendment or modification."

8. In all other respects, the CAP Delivery Contract remains in full force and effect.

9. This First Amendment to the CAP Delivery Contract shall become effective after execution and on the enforceability date of the SRPMIC Agreement as set forth in Paragraph 21.6 thereof.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the CAP Delivery Contract on the date written above.

THE UNITED STATES OF AMERICA

By: _____
Office of the Secretary

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

Attest: _____
Secretary

By: _____
Name: Gerald Anton
Title: President

EXHIBIT "3.k."

RID, City of Phoenix, SRPMIC
and SRP Water Exchange Agreement

EXHIBIT "3.k."

AGREEMENT NO. _____

RID, CITY OF PHOENIX, SRPMIC, AND SRP
WATER EXCHANGE AGREEMENT

1. PARTIES. The parties to this Agreement are the City of Phoenix, hereinafter called "Phoenix;" the Roosevelt Irrigation District, hereinafter called "RID;" the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association, hereinafter called "SRP;" and the Salt River Pima-Maricopa Indian Community, hereinafter called "SRPMIC."

2. RECITALS. This Agreement is made with reference to the following:

2.1 The parties recognize the desirability of reclaiming and beneficially reusing effluent from Phoenix' 23rd Avenue Wastewater Treatment Plant.

2.2 In order to effectuate the reuse of the reclaimed effluent, Phoenix, RID, and SRP have agreed as set forth herein to a three-way exchange of water to their mutual benefit.

2.3 The exchange will consist of Phoenix constructing, operating and maintaining a system to renovate secondarily treated effluent from the 23rd Avenue Wastewater Treatment Plant (WWTP) and delivering the reclaimed effluent to the RID for its unrestricted agricultural use. Phoenix will use the Bouwer Recharge Land Treatment Process to renovate secondarily treated effluent before discharge into the RID canal system.

2.4 RID will pump water of a quality acceptable for irrigation use without further treatment from its existing well system or transmission system for delivery to SRP. Phoenix will pay for the design and construction of certain parts of the system necessary to transfer the RID water to SRP. In addition, Phoenix will pay for certain of the operation, maintenance, repair and replacement costs for transferring the RID water to SRP.

2.5 SRP will deliver water annually to any present or future Phoenix water treatment plant connected to the SRP water delivery system for use by Phoenix, and will also deliver water to SRPMIC for its use.

2.6 The parties hereto have executed or will execute simultaneously with this Agreement an agreement providing for the settlement of certain water claims and disputes between them, which agreement is herein referred to as the SRPMIC Agreement.

2.7 The parties hereto desire to prescribe the principles which shall govern the respective interests, obligations and responsibilities of RID, Phoenix, SRP, and SRPMIC in and to the water exchange described herein (hereinafter referred to as "RID Exchange").

2.8 The parties hereto desire that this Agreement be designated Exhibit "3.k" as it is referred to in Paragraph 11.0 of the SRPMIC Agreement.

3. AGREEMENT. NOW, THEREFORE, in consideration of the respective rights, privileges and obligations of the parties hereinafter set forth, IT IS AGREED as follows:

4. EFFECTIVE DATE. This Agreement shall become effective after execution and on the enforceability date of the SRPMIC Agreement as set forth in Paragraph 21.6 thereof. All covenants, rights and obligations of this Agreement are enforceable on said date unless otherwise provided for herein.

5. DEFINITIONS.

5.1 Bouwer Recharge Land Treatment Process: The process for renovation of secondarily treated effluent from the 23rd Avenue Wastewater Treatment Plant by a method of rapid infiltration as described in a report by Herman Bouwer dated January, 1984 as published by the U.S. Department of Agriculture.

5.2 Regulations for the Reuse of Wastewater: Regulations published by the Department of Health Services in the State of Arizona Official Compilation of Administrative Rules and Regulations, Version 6-30-85, Article IV, R9-20-401 et seq., attached hereto as Exhibit "B."

6. CONSTRUCTION, OPERATION, MAINTENANCE AND ACCOUNTING - BOUWER RECHARGE LAND TREATMENT PROCESS.

6.1 Regarding the application of effluent to the Bouwer Recharge Land Treatment Process, withdrawal of such reclaimed effluent, the transmission of such reclaimed effluent to the RID canal system and the transmission and use of such reclaimed effluent by RID and its customers:

6.1.1 Phoenix will recharge into the ground using the Bouwer Recharge Land Treatment Process secondarily treated effluent from its 23rd Avenue Wastewater Treatment Plant. In

accordance with a method of delivery and pumping schedule as set forth in Exhibit "A" hereto, Phoenix will deliver reclaimed effluent to the RID at a point or points in the RID Canal. RID's obligation to accept reclaimed effluent will be conditioned upon the reclaimed effluent being suitable for unrestricted agricultural use without further treatment at the time and place of delivery to RID. Phoenix shall not be obligated to treat effluent to any standard higher than the standard for unrestricted agricultural use attached as Exhibit "B" hereto, and RID shall not be obligated to accept reclaimed effluent with any regulation, restriction or requirements thereof other than the Regulation for Reuse of Wastewater attached as Exhibit "B." Reclaimed effluent delivered by Phoenix to RID must be delivered in such increments and at such times that it can be fully utilized by RID for satisfaction of its then existing needs.

6.1.2 Phoenix will design, construct, operate and maintain the recharge basins, canals, pumps and facilities necessary to apply effluent to the Bouwer Recharge Land Treatment Process, to withdraw such reclaimed effluent and to transmit and place such reclaimed effluent into the RID canal system.

6.1.3 Phoenix will pay all costs associated with the design, construction, operation, maintenance, repair and replacement of the Bouwer Recharge Land Treatment Process, withdrawal of reclaimed effluent and transmission and placement of such reclaimed effluent into the RID canal system.

. . .

6.1.4 RID will construct, operate and maintain its canal system necessary to receive the reclaimed effluent and, if necessary, enlarge the existing canal system to accept the increased flows from the reclaimed effluent delivered by Phoenix to RID.

6.1.5 After delivery by Phoenix of the reclaimed effluent into the RID canal system at the delivery point identified in Exhibit "C" hereto, RID will pay all costs associated with the design, construction, operation and maintenance of its canal system necessary for the transmission of the reclaimed effluent to its customers except as follows:

6.1.5.1 To the extent that RID has incurred or incurs design and construction costs to enlarge its canal system to accept the increased flows for the transmission of the reclaimed effluent, Phoenix will pay to RID the costs incurred. Phoenix' obligation to pay for the enlargement of the canal capacity to receive the reclaimed effluent shall not include any cost for betterment of the canal system beyond that necessary to receive the increased flows for the reclaimed effluent.

6.1.5.2 RID shall not be required to increase its annualized costs in excess of $5,000 per year as a result of additions to or modifications of RID's transmission or distribution system used to serve RID's customers, or any changes in its operation, necessitated by the application of the Regulation for Reuse of Wastewater attached hereto as Exhibit "B." If such annualized costs exceed $5,000 per year, RID and Phoenix

shall attempt to resolve the issue of who, if anyone, should pay such increased costs; provided, however, Phoenix shall have the right but not the duty to assume all such cost increases in excess of $5,000 per year. If Phoenix exercises such right and pays such increased costs, then RID shall make all such additions, modifications or changes as necessary to conform to the Regulations for Reuse of Wastewater attached hereto as Exhibit "B." Subject to the provisions set forth in this subsection, RID and Phoenix shall have the right to terminate this Agreement if such annualized costs exceed $5,000 per year and the payment of such increased cost is not resolved as provided herein.

6.1.6 Prior to the start of construction of the enlargements to RID's existing canal system pursuant to Paragraph 6.1.4 hereof, RID shall submit the plans and specifications to Phoenix for its concurrence. RID will obtain competitive bids for construction of any such enlargement to RID's existing canal system. Prior to award of the construction contract, RID will obtain the approval of Phoenix of the amount which is eligible for reimbursement under the terms of this Agreement.

6.2 The amount of reclaimed effluent delivered by Phoenix to RID pursuant to Paragraph 6.1.1 hereof will be 91 percent of the amount of water RID will deliver to SRP pursuant to Paragraph 7.2 hereof. Phoenix will deliver to RID no more than 30,030 acre-feet in any calendar year.

6.3 As RID receives reclaimed effluent from Phoenix pursuant to Paragraph 6.1.1 hereof, RID will credit the SRP water

delivery account created for this exchange in the amount of 1.1 acre-feet for each acre-foot of reclaimed effluent RID receives from Phoenix. SRP may not overdraw this account in anticipation of accruing future credits.

6.4 Phoenix' obligation to deliver any specific amount of reclaimed effluent pursuant to the provisions of this Paragraph 6 will be subject to previously existing contractual obligations including, but not limited to, Agreement No. 13904 between the Cities of Glendale, Mesa, Phoenix, Scottsdale and Tempe and the Town of Youngtown and Arizona Public Service Company and SRP.

7. CONSTRUCTION, OPERATION, MAINTENANCE AND ACCOUNTING - RID DELIVERY OF RID WATER INTO SRP FACILITIES.

7.1 Regarding RID's pumping and delivery of RID's water into the SRP transmission and distribution system:

7.1.1 RID will operate and maintain necessary wells, will construct, operate and maintain necessary replacement wells, and will design, construct, operate and maintain necessary transmission systems required to produce and deliver the RID water into SRP's transmission and distribution system.

7.1.2 RID will pay all costs associated with design, construction, operation and maintenance required to deliver RID water to SRP except for the following:

7.1.2.1 Phoenix shall pay RID's design and construction costs and any future repair and replacement costs for that part of RID's transmission system necessary to transfer RID's water to SRP's transmission and distribution system (hereinafter

"RID to SRP Transmission System"). The RID to SRP Transmission System referred to herein includes lift pumps, canal enlargements, pipelines and other improvements which are added to the RID transmission system in order to deliver RID's water to SRP's transmission and distribution system.

7.1.2.2 Phoenix shall pay for the installation and any future repair and replacement costs of metering devices installed on RID's pumps.

7.1.2.3 Subject to Paragraph 10.1 hereof, Phoenix shall pay 50% of all operation, maintenance and repair costs incurred by RID in operating and maintaining the well system and RID to SRP Transmission System necessary pursuant to this Agreement.

7.1.2.3.1 It is expressly understood that water quality monitoring tests and pump tests are considered as a part of the operation and maintenance costs in which Phoenix shall participate by paying 50%.

7.1.2.3.2 It is expressly understood that well replacement costs, for the drilling of a new well or replacement well in the same location, are not part of the operation, maintenance and repair costs in which Phoenix will participate.

7.1.3 Prior to the start of construction of the RID to SRP Transmission System, RID shall submit the plans and specifications to Phoenix and SRP for their concurrence. SRP shall submit its concurrence to RID and Phoenix within 30 days of receipt of such plans and specifications; failure to respond

within this time period shall constitute concurrence. RID will obtain competitive bids for construction of the RID to SRP Transmission System. Prior to award of the construction contract RID will obtain the approval of Phoenix of the amount which is eligible for reimbursement under the terms of this Agreement.

7.1.4 Except in the case of emergency as determined by RID, prior to incurring replacement costs which may be eligible for reimbursement under the terms of this Agreement, RID will obtain the prior concurrence of Phoenix for such costs which exceed $5,000.

7.2 In accordance with the method of implementation and scheduling of pumping and deliveries set forth in Exhibit "D" hereto, RID will deliver to SRP water of a quality acceptable for irrigation use without further treatment which it has pumped pursuant to its entitlements described in Paragraph 11.1 of the SRPMIC Agreement. This RID water then will be delivered by SRP for unrestricted irrigation uses on lands served by SRP. SRP will use its best efforts to use the RID water taking into account water quality and the demand of its agricultural irrigation users. The amount of water delivered by RID to SRP in any calendar year, without a guarantee of minimum quantity to be taken by SRP, will be the lesser of: (a) 33,000 acre-feet; (b) 110 percent of the quantity of reclaimed effluent ordered by RID which Phoenix delivers to RID; or (c) the quantity of water RID provides to SRP for agricultural purposes at the times and flows requested by SRP. RID will deliver to SRP no more than 1.1 acre-foot for each

acre-foot RID receives from Phoenix, and RID will deliver to SRP no more than 33,000 acre-feet in any calendar year. The daily deliveries to SRP by RID may be limited to the amount of water the RID facilities can deliver, at the times and locations requested by SRP, without impeding RID's ability to fully satisfy RID's and RID's customers' then existing water delivery needs. In the event SRP is unable to obtain the approvals or permits referred to in Paragraph 9.1.4 hereof, SRP shall not be obligated to participate in the RID Exchange.

8. SRP DELIVERY OF WATER TO PHOENIX AND SRPMIC.

8.1 As SRP receives water from RID pursuant to Paragraph 7 hereof, SRP will credit Phoenix and SRPMIC water delivery accounts created for this exchange on the basis of .91 acre-foot for each acre-foot SRP received from RID. The exchange credits will accrue at the RID pump outlets. SRP shall allocate credits in these accounts on the basis of two-thirds of the credits to Phoenix and one-third of the credits to SRPMIC. Deliveries of surface water by SRP to Phoenix and SRPMIC pursuant to this Paragraph 8.1 shall be deducted on an acre-foot for acre-foot basis from those credits. SRP will deliver water to Phoenix pursuant to this Agreement at any present or future Phoenix water treatment plant connected to SRP canals.

8.2 The principal provisions governing Phoenix and SRPMIC water delivery exchange accounts maintained by SRP are as follows:

. . .

8.2.1 Neither Phoenix nor SRPMIC may overdraw its account in anticipation of accruing future credits;

8.2.2 The maximum withdrawal by SRPMIC in any year will be 10,010 acre-feet;

8.2.3 All credits in SRPMIC's account at the end of the calendar year in excess of 10,000 acre-feet will be deducted from the SRPMIC account and credited to Phoenix's account at the close of business on the last day of the calendar year;

8.2.4 All credits in the Phoenix account at the end of the calendar year in excess of 20,000 acre-feet will be deducted from the Phoenix account and credited to the SRPMIC account on the first day of the next calendar year;

8.2.5 The maximum carryover in the SRPMIC account, including Phoenix credits transferred to SRPMIC, at the beginning of any calendar year shall be 10,000 acre-feet;

8.2.6 The maximum carryover in the Phoenix account at the beginning of any calendar year shall be 20,000 acre-feet;

8.2.7 To the extent water is not used or carried over in accordance with these provisions, it will become SRP stored water. Phoenix and SRPMIC carryover entitlements under this Paragraph 8.2 shall spill as provided in Paragraph 21.9 of the SRPMIC Agreement. Monthly evaporation will be charged against Phoenix and SRPMIC water delivery exchange accounts at the rate of one-half of one percent (0.5%) of the water balance carried forward at the end of each month.

. . .

9. OBTAINING NECESSARY AND APPLICABLE GOVERNMENT APPROVALS AND PERMITS.

9.1 RID, Phoenix, SRPMIC and SRP agree that as conditions precedent to the enforcement of the specific rights and duties pertaining to this RID Exchange, it will be necessary that many of the aspects of the proposed exchange be reviewed and approved by Federal, State or other governmental agencies. In order to obtain all necessary and applicable governmental approvals and permits, Phoenix, RID, SRP and SRPMIC, with the full cooperation of each other, agree to use their best faith efforts to obtain any required permits and approvals including the following:

9.1.1 Phoenix will be responsible for obtaining all permits or approvals to discharge its effluent from the 23rd Avenue Wastewater Treatment Plant, to apply such effluent to the Bouwer Recharge Land Treatment Process, to withdraw such reclaimed effluent and to transport and place such reclaimed effluent into the RID canal system;

9.1.2 RID will be responsible for obtaining all permits or approvals required regarding the pumping of its water into the SRP transmission and distribution facilities;

9.1.3 Phoenix and RID will be responsible for obtaining all permits or approvals required regarding the application of such reclaimed effluent for unrestricted agricultural uses, as provided in this Agreement;

. . .

9.1.4 SRP shall be responsible for obtaining approvals or permits from DWR necessary to allow SRP to deliver to SRP shareholders and contract users RID Exchange water in amounts of 10 percent above the then-existing water duties on the lands to which such exchange water may be applied; provided, however, any additional water delivered to satisfy an increased water duty obtained pursuant to this Agreement shall be limited to RID Exchange water. In the event of a final, non-appealable DWR determination that SRP shareholders and contract users are entitled to apply amounts of RID Exchange Water less than the ten percent above the then-existing water duties, then and in that event SRP shall have the right, but not the obligation, to accept such DWR determination, subject to the right of SRP to receive the total of ten percent for use on any SRP lands.

9.1.5 In accordance with the provisions of this Agreement, including but not limited to the permit requirements hereof, Phoenix, RID, SRP and SRPMIC further agree to expedite all permitting, design and construction activities required to implement the RID Exchange.

9.2 With respect to the permit and approval requirements of Paragraph 9.1 of the Agreement, Phoenix and RID agree as follows:

9.2.1 In seeking permits and approvals, Phoenix will provide to the permitting authorities the requested information and expertise concerning the quality of the reclaimed effluent delivered to RID for unrestricted agricultural uses; and

9.2.2 In seeking permits and approvals, RID will provide the permitting authorities required information and expertise concerning the application of such reclaimed effluent for unrestricted agricultural uses.

10. RID BUDGET.

10.1 RID will provide to Phoenix an Annual Operating Budget. The Annual Operating Budget will provide RID's estimate of operating, maintenance and repair costs, on a per acre foot or other mutually acceptable basis, expected to be incurred by RID in operating and maintaining the well system and RID to SRP Transmission System necessary pursuant to this Agreement.

10.2 Except in the case of emergency as determined by RID, RID will seek the prior approval of Phoenix of operation, maintenance and repair costs which RID expects will, on an aggregate basis, exceed the Operating Budget by 25% per acre foot.

11. REQUEST FOR PHOENIX APPROVALS. Unless otherwise mutually agreed, Phoenix's responses to RID's requests for concurrence or approval required herein shall be in writing. Requests for concurrence or approval required herein, not acted upon by Phoenix within 30 days of the date submitted by RID, shall be deemed approved.

12. INTEREST ON BILLINGS. Amounts payable herein by Phoenix to RID shall be rendered no later than 30 days after the bill is postmarked. Phoenix shall pay to RID interest, at the same rate Phoenix charges its delinquent taxpayers, for payments not received 30 days after bills are postmarked.

13. DISPOSITION OF IMPROVEMENTS ON TERMINATION.

13.1 With respect to improvements made to RID's well and transmission systems necessary to implement and operate this RID Exchange, Phoenix and RID agree:

13.1.1 On or before 180 days after the termination of this Agreement, RID shall provide to Phoenix a list or other written identification of certain removable components of RID's transmission system, such as lift pumps, pipelines and metering devices installed on RID's transmission system and necessary to implement this RID Exchange, which RID desires to salvage or use for purposes other than this RID Exchange. On or before 60 days after RID provides Phoenix with its list or other identification of the certain removable components, RID and Phoenix shall agree on the amount RID may refund to Phoenix for such removable components. As to those removable components not identified by RID and which RID and Phoenix do not reach agreement as to the amount of refund, provided such may be fully removed by Phoenix without damaging RID's or RID's customers' property and without impeding RID's and RID's customers' then-existing water delivery needs, upon 30 days' prior written notice to RID, Phoenix will be given the opportunity by RID to fully remove such components. All property affected by Phoenix's removal of such components shall be restored by Phoenix to the same or better condition existing prior to Phoenix's removal of the removable components.

. . .

. . .

13.1.2 RID is not obligated to pay and Phoenix is not entitled to receive any refund or payment for the design, construction, maintenance, repair or replacement of:

13.1.2.1 Any part of RID's well system;

13.1.2.2 Any component of RID's transmission system which Phoenix cannot remove pursuant to the terms of subparagraph 13.1.1 hereof;

13.1.2.3 Any component not identified by RID and mutually priced by Phoenix and RID pursuant to the terms of subparagraph 13.1.1 hereof; or

13.1.2.4 Any nonremovable component of RID's transmission system.

13.1.3 All facilities necessary to implement this RID Exchange, except those certain components removed by Phoenix in accordance with subparagraph 13.1.1 hereof, may be disposed of by RID.

14. TERMINATION. It is expressly anticipated by the parties that this RID Exchange will gradually phase out as SRP shareholders' agricultural lands receiving the RID Exchange water are urbanized or upon expiration of RID's contractual relationship with SRP as described in Paragraph 11.1 of the SRPMIC Agreement, whichever occurs first.

15. UNCONTROLLABLE FORCES. No party hereto shall be considered to be in default in the performance of any of the obligations hereunder if failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" shall mean any cause

beyond the control of the party affected, including but not limited to failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, and action or nonaction by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage and restraint by Court order or public authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be constructed so as to require either party to settle any strike or labor dispute in which it may be involved. Either party rendered unable to fulfill any obligation by reason of an uncontrollable force shall exercise due diligence to remove such inability with all reasonable dispatch.

16. COUNTERPARTS. This Agreement may be executed in duplicate originals, each of which shall constitute an original Agreement.

17. SUCCESSION. This Agreement shall inure to the benefit of and be binding upon the successors of the parties hereto; provided, however, this Agreement cannot be assigned without the written consent of the parties hereto. Any attempted assignment without obtaining such consent shall be void.

18. SECTION HEADINGS. Section headings in this Agreement are for convenience only and do not purport to accurately or completely describe the contents of any section. Such headings

are not to be construed as part of this Agreement or any way defining, limiting or amplifying the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the respective officers hereunto duly authorized.

CITY OF PHOENIX, a municipal corporation
MARVIN A. ANDREWS, City Manager

By _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED UNDER THE LAWS OF ARIZONA TO THE CITY OF PHOENIX:

_____
City Attorney

ROOSEVELT IRRIGATION DISTRICT

By _____
~~Its President~~ Board Member

ATTEST:

_____
Secretary

. . .

APPROVED AS TO FORM AND
WITHIN THE POWERS AND
AUTHORITY GRANTED UNDER
THE LAWS OF ARIZONA TO RID:

Attorney

SALT RIVER VALLEY WATER USERS'
ASSOCIATION

By
Its President

ATTEST:

Secretary

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By
Its President

ATTEST:

Secretary

APPROVED AS TO FORM AND
WITHIN THE POWERS AND
AUTHORITY GRANTED UNDER
THE LAWS OF ARIZONA TO SRP:

Attorney

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SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY

By _____
Its President

ATTEST:

_____
Secretary

APPROVED AS TO FORM AND
WITHIN THE POWERS AND
AUTHORITY GRANTED UNDER
THE CONSTITUTION AND LAWS
OF SRPMIC:

_____
Attorney

EXHIBIT "A"
PHOENIX - RID
RECLAIMED EFFLUENT DELIVERY SCHEDULE

Section 1. Pursuant to Paragraph 11 and Exhibit 3.k. of the SRPMIC Agreement, reclaimed effluent delivered by Phoenix to RID shall be in accordance with RID's request as defined in Section 2, except for:

(a) interruptions or reductions due to uncontrollable forces;

(b) temporary interruptions or reductions which, in the opinion of the City of Phoenix, are necessary or desirable for the purposes of maintenance, repairs, replacements, installations, investigations and inspections of the City of Phoenix equipment and facilities, provided that the City of Phoenix, except in case of emergency as determined by the City of Phoenix, will give RID reasonable advance notice of temporary interruptions or reductions and will attempt to remove the cause thereof with diligence. Provided further, in no event shall any liability accrue against the City of Phoenix, its officers, agents and employees by reason of any such interruptions or reductions in the delivery of reclaimed effluent hereunder, nor shall RID be entitled to any compensation or reimbursement for any such interruptions or reductions.

Section 2. Reclaimed effluent deliveries hereunder to RID shall be made at RID's request, provided that requests for delivery, or changes in amount of delivery, shall be made by RID twenty-four (24) hours in advance of the delivery date and prior to three o'clock p.m. on the day such request is made. Unless otherwise mutually agreed in writing, RID's request for delivery

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shall be made by RID's authorized representative to the Superintendent of Wastewater Treatment of the City of Phoenix and may be verbal, or in writing, provided verbal requests are confirmed monthly in writing mailed to the City of Phoenix at 23rd Avenue Wastewater Treatment Plant, 23rd Avenue and Durango, Phoenix, Arizona. RID's requests, both written and verbal, shall specify the amount of reclaimed effluent being requested as well as the time the delivery is to be made. The amount of reclaimed effluent ordered shall not exceed 87.8 cubic feet per second.

Section 3. The dates and amounts of Phoenix's deliveries shall be confirmed monthly in writing mailed to the Superintendent of RID at RID's Administrative Offices, P.O. Box 94, Buckeye, Arizona 85326.

Exhibit "B"

Regulations for the Reuse of Wastewater

EXHIBIT "B"

ARTICLE 4. REGULATIONS FOR THE REUSE OF WASTEWATER

R9-20-401. Definitions

Definitions given in R9-8-312, R9-20-203, and applicable State statutes will apply to those words and phrases when used in this Article. In addition, the following apply:

1. "Reuse of reclaimed wastewater" means the use of reclaimed wastewater transported from the point of treatment to the point of use without an intervening discharge to the surface waters of the State for which water quality standards have been established.
2. "Effluent" means wastewater that has completed its passage through a wastewater treatment plant.
3. "Gray water" means wastewater that originates from clothes washers, dishwashers, bathtubs, showers, and sinks, except kitchen sinks and toilets.
4. "Industrial wastewater" means all wastes that enter a collection, treatment or disposal system from an industrial process.
5. "Irrigation" means the application of water or wastewater or both for growing agricultural crops or for landscaping purposes.
6. "NPDES permit" means a permit issued by the United States Environmental Protection Agency for discharge to the waters of the United States as required by the Clean Water Act, as amended.
7. "On-site wastewater treatment plant" encompasses all of the processes, devices, structures, and earthworks used for treating wastewater for disposal and reuse other than septic tanks with a hydraulic capacity less than two thousand (2,000) gallons per day that possess a N.S.F. Class I rating.
8. "Open access" means that access to the reuse site by the general public is uncontrolled.

9. "Partially treated wastewater" means wastewater which has received a minimum of primary treatment but does not meet the allowable limits contained in R9-20-403 for release to a reuse, or for discharge into the waters of the United States.

10. "Primary treatment" is a treatment process which accomplishes removal of sewage solids by physical means so that the effluent contains no more than 1.0 milligram of settleable solids per liter of wastewater.

11. "Reclaimed wastewater" is effluent which meets the standards for the specific reuses contained in R9-20-403.

12. "Restricted access" means that the access to the reuse site by the general public is controlled.

13. "Reuse" means the use of reclaimed wastewaters.

14. "Reuse site" means that area where reclaimed wastewater is applied to and/or impounded upon.

15. "Secondary treatment" is a treatment process that produces treated wastewater containing no more than 30 milligrams per liter of five-day biochemical oxygen demand, 30 milligrams per liter of suspended solids, a pH between the limits of 6.0 to 9.0, and a fecal coliform standard based on the uses of the wastewater. Aerobic stabilization ponds shall be considered as providing secondary treatment if the effluent contains no more than 30 milligrams per liter of five-day biochemical oxygen demand, 90 milligrams per liter of suspended solids for pond systems treating less than or equal to two million gallons per day, plus the same pH and fecal coliform standards given above. Pond systems with a design capacity of greater than two million gallons per day must meet the 30 milligram per liter standard for suspended solids.

16. "Wastewater" means sanitary wastes of human origin, sewage, gray water, and industrial wastes that contain sanitary wastes or are used in the production or processing of any crop or substance which may be used as human or animal food.

17. "Wastewater reclamation system" means the wastewater treatment plant and the entire reuse and distribution system for the reclaimed wastewater.

18. "Wastewater treatment plant" encompasses all of the processes, devices, structures, and earth-works which are used for treating wastewater for disposal and reuse, but does not include septic tanks, wastewater treatment plants serving single family residences, industrial unit processes, or industrial impoundments for process waters within the industrial property.

Historical Note

Former Section R9-20-401 repealed, new Section R9-20-401 adopted eff. May 24, 1985 (Supp. 85-3).

R9-20-402. General requirements for reuse of wastewater

A. The application of reclaimed wastewater shall be consistent with the goals and policies of the Council.

B. Irrigation with untreated wastewater is prohibited.

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C. No wastewater treatment plant owner shall release reclaimed wastewater for reuse without a permit issued by the Department.

D. Food crops which may be consumed raw by humans that are irrigated with reclaimed wastewater shall be considered adulterated foods in accordance with A.R.S. § 36-904.A.5, unless the reclaimed wastewater conforms with the limits and conditions of R9-20-403. The production, sale or delivery of such adulterated food crops is prohibited and the Director may detain, remove, or destroy such adulterated food crops pursuant to A.R.S. § 36-910.

E. A reuser may accept reclaimed wastewater and provide additional treatment for a more restrictive reuse. Under such conditions, the plant providing the additional treatment is subject to the same requirements as other wastewater treatment plants and will be permitted separately.

F. When no means of reuse, discharge, or disposal of reclaimed wastewater are available other than surface irrigation, a minimum of five days storage shall be provided to prevent the necessity of irrigation when the soil is saturated or during a period when the reclaimed wastewater does not meet the minimum water quality standards for the specific reuse. The irrigation site shall be designed to contain the runoff from a 10-year, 24-hour precipitation event unless the reclaimed wastewater meets the standards and conditions of a valid NPDES permit for discharge into waters of the United States. These provisions shall not apply to agricultural irrigation return flows, and runoff from highway landscaping or golf courses when the Department determines that such a flow does not present a danger to the health of the public.

G. Discharges of effluent into waters of the United States require a NPDES permit and are not regulated by this Article.

H. In determining allowable uses of reclaimed wastewater, the Department will consider the effects of blending secondary effluent with waters of higher quality or the effects of additional treatment prior to reuse if requested by the applicant. In cases where blending or additional treatment of secondary effluent is provided, the user shall submit to the Department, as a minimum, a plan of operation, a description of any additional treatment process, blending volumes, and an estimation of final quality at the point of reuse.

I. The wastewater treatment plant owner or the reclaimed wastewater owner shall be responsible and liable for meeting the conditions of the wastewater reuse permit. The treatment plant owner will not be liable for misapplication of reclaimed wastewater by reusers. To identify the responsibilities of the wastewater treatment plant owner and the reclaimed wastewater owner there shall be a legally enforceable contract which sets forth as a minimum:

1. The quality and maximum quantity of wastewater to be released for reuse by the wastewater treatment plant.

2. The specific reuse(s) for which the reclaimed wastewater will be used by the reuser.

3. The method of disposal of any reclaimed wastewater left over from the reuse activity by the reuser.

4. The responsibility for compliance with additional requirements for specific reuses as contained in R9-20-403.C, by the reuser.

J. In those cases where the reclaimed wastewater is owned by someone other than the wastewater treatment plant owner, the reclaimed wastewater owner may apply for the reuse permit pursuant to R9-20-405.A. and perform any of the other functions required by this Article so long as the reclaimed wastewater owner, in a form acceptable to the Director, commits to perform any or all of the duties required in this Article and/or produces a legally enforceable contract with the wastewater treatment plant owner which commits performance to any or all of the duties required in this Article. The intent of this policy is that the wastewater treatment plant owner and the reclaimed wastewater owner, either together or separately, agree to commit to all of the requirements of this Article, as shown in a legally enforceable contract.

K. In cases where someone other than the wastewater treatment plant owner makes an actual reuse of the reclaimed wastewater, each succession of ownership shall be governed by a legally enforceable contract, filed with the Department, which notifies the succeeding reclaimed wastewater owner of the requirements of this Article and which requires the succeeding owner to so contract with any additional succeeding reclaimed wastewater owners.

L. Nothing in this Article is intended to exempt disposal of reclaimed wastewater from the requirements of A.C.R.R. Title 9, Chapter 20, Article 2.

M. The use of reclaimed wastewater for direct human consumption is prohibited.

Historical Note

Former Section R9-20-402 repealed, new Section R9-20-402 adopted eff. May 24, 1985 (Supp. 85-3).

R9-20-403. Specific standards and permit monitoring requirements for the reuse of wastewater

A. Numerical parameter limits pertaining to specific reuse categories are contained in Table I of this Article and A.C.R.R. Title 9, Chapter 21, Article 2. Concentrations of trace substances, organic chemicals, toxic substances, and radiochemicals in waters used for agricultural irrigation, livestock watering, and recreation must meet the allowable limits contained in the State surface water quality standards, A.C.R.R. Title 9, Chapter 21, Article 2. Permit monitoring requirements for specific reuses are given in Table II of this Article. The regulations in this part apply to effluent flow at a point in the wastewater reclamation system just prior to release for reuse.

B. Permittees are not required to monitor routinely for enteric viruses, entamoeba histolytica, giardia lamblia, ascaris lumbricoides, common large tapeworm, trace substances, organic chemicals, toxic substances, or radiochemicals for which no sampling frequency is specified. However, should the Department find or have reason to believe such contaminants are present in excess of the allowable limits given in Table I of this Article and A.C.R.R. Title 9, Chapter 21, Article 2, corrective action including monitoring will be required to eliminate or reduce the contaminants to meet these limits.

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TABLE 1 — ALLOWABLE PERMIT LIMITS FOR SPECIFIC REUSES

PARAMETER	A ORCHARDS	B FIBER, SEED & FORAGE	C. PASTURES	D LIVESTOCK WATERING	E PROCESSED FOOD	F LANDSCAPED AREAS RESTRICTED ACCESS	G OPEN ACCESS	H FOOD CONSUMED RAW	I INCIDENTAL HUMAN CONTACT	J FULL BODY CONTACT
pH	4.5-9	4.5-9	4.5-9	6.5-9	4.5-9	4.5-9	4.5-9	4.5-9	6.5-9	6.5-9
FECAL COLIFORM (CFU/100 ml)[a]										
geometric mean (5 sample minimum)	1000	1000	1000	1000	1000	200	25	2.2	1000	200
single sample not to exceed	4000	4000	4000	4000	2500	1000	75	23	4000	800
TURBIDITY (NTU)[b]	—	—	—	—	—	—	5	1	5	1
ENTERIC VIRUS[c]	—	—	—	—	—	—	125 per 40 liters	1 per 40 liters	125 per 40 liters	1 per 40 liters
ENTAMOEBA HISTOLYTICA	—	—	—	—	—	—	—	none detectable	—	none detectable
GIARDIA LAMBLIA	—	—	—	—	—	—	—	none detectable	—	none detectable
ASCARIS LUMBRICOIDES	—	—	—	—	—	—	none detectable	none detectable	none detectable	none detectable
COMMON LARGE TAPEWORM	—	—	none detectable	none detectable	—	—	—	—	—	—

Notes: a. CFU = colony forming units
b. NTU = nephelometric turbidity units
c. expressed as PFU, plaque forming units; MPN, most probable numbers; or immunofluorescent foci per liter
d. "None detectable" means no pathogenic microorganisms observed during examination

TABLE H — MINIMUM PERMIT MONITORING REQUIREMENTS FOR SPECIFIC REUSES

PARAMETER	Frequency										
	A ORCHARDS	B FIBER, SEED & FORAGE	C PASTURES	D LIVESTOCK WATERING	E PROCESSED FOOD	F LANDSCAPED AREAS RESTRICTED ACCESS	G OPEN ACCESS	H FOOD CONSUMED RAW	I INCIDENTAL HUMAN CONTACT	J FULL BODY CONTACT
pH	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month	1/month
FECAL COLIFORM	1/month	1/month	1/month	1/month	1/month	1/week	1/day	1/day	1/week	1/day
TURBIDITY	—	—	—	—	—	—	continuous	continuous	continuous	continuous

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C. Additional requirements for specific uses.

1. Irrigation of orchard crops and crops not subject to rotation (Table I, Column A). Irrigation shall be by a method which minimizes contact of the reclaimed wastewater with the fruit or foliage.

2. Irrigation of pastures (Table I, Column C). Pastures must be maintained to prevent incidental ponding or standing water except where local farming conditions and the use of accepted irrigation delivery systems and cropping patterns are such that, as an unavoidable consequence of such conditions, systems, and patterns, there will be standing water.

3. Irrigation of landscaped areas, cemeteries, highway medians, golf courses, and other areas where public access is restricted (Table I, Column F). Golf courses in residential areas which are separated by a fence or barrier of at least four feet in height will be included in this category. Golf courses contiguous with a residential area primarily restricted to adults or which strictly enforce non-access for anyone other than players will be included in this category.

a. Spray irrigation of fairways shall be limited to such times of the day as to reasonably preclude direct contact of the spray with golfers.

b. Irrigation spray shall not reach any privately-owned premises or public drinking fountains.

c. Hose bibbs discharging reclaimed wastewater shall be posted with signs reading "Reclaimed Water, Do Not Drink", or similar warnings, or be secured to prevent access by the public.

d. Signs reading "Irrigation with reclaimed wastewater" or similar warning shall be prominently displayed on the premises. Score cards shall include the same warning.

e. Irrigation pipe shall be color coded, buried with colored tape, or otherwise suitably marked to indicate non-potable water.

4. Irrigation of landscaped areas including playgrounds, lawns, parks, golf courses not covered by Paragraph 3. above, and other areas where public access is not restricted (Table I, Column G).

a. Hose bibbs discharging reclaimed wastewater shall be secured to prevent any use by the public.

b. Irrigation pipe shall be color coded, buried with colored tape, or otherwise suitably marked to indicate non-potable water.

c. These areas shall be irrigated only at such time as to minimize contact with the public and be reasonably dry and free from standing water during normal usage periods.

d. Signs reading "Irrigated with reclaimed wastewater" or similar warnings shall be prominently displayed on the premises.

5. On-site wastewater treatment plants.

a. For surface irrigation, on-site wastewater treatment plant effluent must meet the allowable limits listed in Table III of this Article. Surface irrigation sites shall be

designed to contain a 10-year, 24-hour rainfall event. On-site wastewater treatment plants which use reclaimed wastewater within common areas or discharge to areas off the reuse site are subject to quality, monitoring, management, and operation requirements which pertain to all other wastewater treatment plants.

b. This Section does not apply to on-site wastewater treatment plants that dispose effluent through the following means:

i. Conventional leach trenches designed in accordance with Department engineering bulletins.

ii. Mound disposal systems.

iii. Evapotranspiration beds designed in accordance with Department engineering bulletins.

6. Gray water from single and multi-family residences may be used for surface irrigation under the following conditions:

a. The design and construction of the system are approved by the Department in accordance with A.C.R.R. Title 9, Chapter 8, Article 3. Design guidelines and information on suitable plantings and irrigation methods are available from the Department.

b. Such irrigation sites shall be designed to contain a 10-year, 24-hour rainfall event.

c. The gray water must meet the allowable limits for surface irrigation in Table III.

TABLE III
ALLOWABLE LIMITS AND MONITORING REQUIREMENTS
FOR SURFACE IRRIGATION WITH ON-SITE WASTEWATER TREATMENT
PLANT EFFLUENT AND GRAY WATER

Parameters	Allowable Limits	Samples Required
Fecal Coliform (CFU/100 ml)		
geometric mean	25	Series of 5 in one calendar month; 1 series per year minimum
single sample not to exceed	75	
Chlorine Residual, mg/l	2.0	1/month minimum

7. Wetlands marsh.

a. Formation of a wetlands marsh is an allowable reuse of reclaimed wastewater under conditions and design criteria outlined in Engineering Bulletin No. 11, available from the Department.

b. Table IV of this Article contains minimum effluent standards and monitoring requirements for formation of a wetlands marsh or addition of reclaimed wastewater to an existing man-made wetlands marsh.

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TABLE IV
ALLOWABLE LIMITS AND MONITORING REQUIREMENTS
FOR RECLAIMED WASTEWATER RELEASED
TO WETLANDS MARSHES

Parameter	Allowable Limits	Samples Required
FECAL COLIFORM		
(CFU/100 ml, 30-day period)		
FLOWS LESS THAN 1 MILLION GALLONS PER DAY		
geometric mean	1000	5/month
single sample not to exceed	4000	
FLOWS 1 MILLION GALLONS PER DAY OR ABOVE		
geometric mean	1000	10/month
single sample not to exceed	4000	
pH, units	6.5-8.6	1/week
pH CHANGE, units/day, maximum change per day in receiving waters	0.5	
DISSOLVED OXYGEN, receiving waters shall not be lowered beyond this limit (mg/l)	6	2/week
TEMPERATURE	shall not interfere with aquatic life and wildlife	2/week
TRACE SUBSTANCES	per A.C.R.R. Title 9, Chapter 21, Article 2 "aquatic and wildlife"	

8. Industrial reuse.

a. All wastewater reclamation systems that contain industrial wastewater will be subject to these Regulations, if they either:

i. totally or partially consist of or originated as a sanitary waste of human origin; or,

ii. are used for the production and processing of any crops or substance which may be used as human or animal food.

b. Reuse of reclaimed wastewater for industrial purposes is exempt from these Regulations under the following circumstances:

i. The industrial wastewater did not originally contain sanitary wastes of human origin; or,

ii. the wastewater is not used for the production or processing of any crop or substance which may be used as human or animal food.

b. If not exempt, each industrial reuse will be considered on an individual basis to determine applicable quality criteria. The variety of industrial reuses is so extensive that establishing specific criteria governing all industrial reuses is not practicable. In

fixing such treatment requirements and quality criteria the Department shall give consideration to:

i. The degree of potential contact with the reclaimed wastewater by the general public.

ii. The degree of potential contamination of the products or byproducts being produced or handled in the industrial process.

c. The use of secondary treated reclaimed wastewater for use in industrial cooling processes shall be allowed.

Historical Note

Former Section R9-20-403 repealed, new Section R9-20-403 adopted eff. May 24, 1985 (Supp. 85-3).

R9-20-404. Irrigation as part of the wastewater treatment process

Irrigation with partially treated wastewater is considered a part of the treatment process and is subject to the same Department controls as other wastewater treatment processes. Such irrigation is allowable only under all of the following conditions:

1. The person having administrative control over the wastewater treatment plant or the reclaimed wastewater owner has direct physical and administrative control over the irrigation site and process.

2. The entire treatment process, including irrigation and harvesting, is under the direct supervision of a watewater treatment plant operator certified by the Department under A.C.R.R. Title 9, Chapter 20, Article 5.

3. The irrigation site, cropping, application rates, irrigation practices, harvesting, and a plan of operation shall have been approved by the Department.

4. Land to which partially treated wastewater is applied shall not be used for crops requiring higher quality irrigation water until such land use is approved in writing by the Department.

5. Any discharge of partially treated wastewater from the irrigation site shall be from a designated discharge point or points and shall meet the limits and conditions of NPDES permit or a groundwater permit issued under A.C.R.R. Title 9, Chapter 20, Article 2.

Historical Note

Former Section R9-20-404 repealed, new Section R9-20-404 adopted eff. May 24, 1985 (Supp. 85-3).

(The next page is 3.)

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R9-20-405. Permit for reuse of reclaimed wastewater

A. To effectuate R9-20-402.C., above, the following shall apply:

1. Application for a permit and signatories.

a. The owner or operator of any wastewater treatment plant or reclaimed wastewater owner who proposes to allow the reclaimed wastewater to be reused for any of the purposes authorized by these Regulations shall complete, sign and submit to the Director information requested in an application form provided by the Department.

b. All permit applications shall be signed by either a principal executive officer or ranking elected official.

2. Time allowed for application submittal. A person proposing a reuse facility shall submit an application not less than 120 days before the date on which the reuse is to commence, unless permission for a lesser period has been granted by the Director.

3. Reissuance of permit: time allowed for application submittal. A person who expects to continue to release reclaimed wastewater for reuse after expiration of the permit shall apply for reissuance not less than 120 days before the expiration date of the present permit.

4. Duration of permits and continuation of expiring permits.

a. All permits shall be issued for fixed terms not to exceed five years. Permits may be modified, transferred, reissued, or revoked by the Director.

b. The term and conditions of an expired permit are automatically continued under the provisions of A.R.S. § 41-1012.B pending issuance of a new permit if:

i. The permitted activity is of a continuing nature.

ii. The permittee has submitted a timely and sufficient application for a new permit.

iii. The Department is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

5. Public comment and hearings, public notice regarding permits and permit hearings.

a. Notices shall be circulated in a manner designed to inform interested persons of a hearing or determination dealing with permit denial or issuance. Notice of draft permit shall allow at least 30 days for public comments and notice of hearing shall be given 30 days before the hearing.

b. Notice of the formulation of any draft permit and notice of all hearings shall be given by the Department:

i. By mailing a copy to the applicant, to interested State and county agencies, and to any person on request.

ii. By any of the following methods:

(1) By publication of a notice in a daily or weekly newspaper within the area affected by the wastewater reuse activity or discharge; or,

(The next page is 3.1.)

(2) by posting a copy of the information required at the principal office of the municipality or political subdivision affected by the wastewater reuse activity or discharge, and by posting a copy at the United States Post Office serving those premises.

(3) In any other manner constituting legal notice under State law.

B. Public notices issued under this Section will contain the following information:

1. Name and address of the office processing the application or conducting the hearing.

2. Name and address of the applicant and the wastewater treatment plant owner (if different from the applicant) and a general description of the location of each existing or proposed reuse facility.

3. Name of person, and an address and telephone number where interested persons may obtain further information, including copies of the draft permit.

C. Transfer of permits. A permit may be transferred to another person by a permittee if:

1. The permittee notifies the Director of the proposed transfer.

2. A written agreement containing a specific date for transfer of permit responsibility and coverage between the current and new permittees (including acknowledgment that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on) is submitted to the Director.

3. The Director, within 30 days of receiving a transfer notice, does not notify the current permittee and the new permittee of the intent to modify, revoke and reissue, or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.

D. Permit compliance. To assure compliance with permit terms and conditions, the permittee shall monitor:

1. The amount, concentration, or other measurement for each contaminant from Table II of this Article and A.C.R.R. Title 9, Chapter 21, Article 2 specified in the permit.

2. The volume of reclaimed wastewater released for reuse.

3. Other parameters specifically required in the permit.

4. The Director will specify the following monitoring requirements in the permit:

a. Requirements concerning proper installation, use and maintenance of monitoring equipment or methods (including biological monitoring methods where appropriate).

b. Monitoring frequency, type and intervals sufficient to yield continuing data representative of the volume of reclaimed wastewater flow and the quantity of contaminant discharged.

c. Test procedures for the analysis of contaminant meeting the requirements of this Section.

5. Test procedures identified in 40 CFR Part 136 shall be utilized for contaminants or parameters listed in the permit unless an alternative test procedure has been approved by the Director.

E. Recording of monitoring results.

1. Any permittee required to monitor shall maintain records of all monitoring information and monitoring activities, including:

a. The date, exact place and time of sampling or measurements.

b. The person(s) who performed the sampling or measurements.

c. The date(s) analyses were performed.

d. The person(s) who performed the analyses.

e. The analytical techniques or methods used.

f. The results of such analyses.

2. All records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records) shall be retained by the permittee for three years. The three-year period shall be extended:

a. Automatically during the course of any unresolved litigation regarding the discharge of contaminants by the permittee.

b. As requested in writing by the Director.

F. Access to records. The manager of the wastewater treatment plant shall allow any and all of the reusers to have access to the records of physical, chemical and biological quality of the reclaimed wastewater.

G. Availability of records. Water quality records of the wastewater facility will be available for public inspection at the Department.

H. Reuses requiring lower quality reclaimed wastewater than that allowed by permit. It is expressly allowed that a reuser of reclaimed wastewater may use the water for any purpose included in these Regulations which requires a lower quality than that set forth in the permit.

Historical Note

Former Section R9-20-405 repealed, new Section R9-20-405 adopted eff. May 24, 1985 (Supp. 85-3).

R9-20-406. Enforcement and penalties

Any person who releases reclaimed wastewater for reuse without a permit or contrary to provisions of a permit or this Article, falsifies data or information submitted to the Department as a result of the requirements of this Article, or otherwise violates the provisions of this Article, shall be subject to enforcement and penalties pursuant to A.R.S. §§ 36-1864, 36-1864.01, 36-1864.02 and any other applicable and appropriate provisions of the Arizona Revised Statutes.

Historical Note

Former Section R9-20-406 repealed, new Section R9-20-406 adopted eff. May 24, 1985 (Supp. 85-3).

(The next page is 4.)

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EXHIBIT "C"

POINT OF DELIVERY TO RID

(To Be Provided Subsequent To Engineering Studies)

EXHIBIT "C"
Point of Delivery to RID
NOT AVAILABLE AS OF THE EXECUTION OF THIS AGREEMENT

EXHIBIT "D"

RID - SRP
WATER DELIVERY SCHEDULE

Section 1. Pursuant to Paragraph 11 and Exhibit 3.k. of the SRPMIC Agreement, RID water delivered to SRP shall be in accordance with SRP's request as defined in Section 2, except for interruptions or reductions:

(a) due to RID's inability to satisfy SRP's request and still fully satisfy RID's and RID's customers' then-existing water delivery needs;

(b) due to uncontrollable forces; and

(c) which, in the opinion of RID, are necessary or desirable for the purposes of maintenance, repairs, replacement, installations, investigations and inspections of RID's equipment and facilities; provided that RID, except in the case of emergency, as determined by RID, will give SRP reasonable advance notice of temporary interruptions or reductions and will attempt to remove the cause thereof with diligence. In no event shall any liability accrue against RID, its officers, agents, employees and customers by reason of any such interruptions or reductions in the delivery of RID water hereunder, nor shall SRP, its shareholders and customers be entitled to any compensation or reimbursement for any such interruptions or reductions.

Section 2. RID water deliveries hereunder to SRP shall be made at SRP's request, provided that requests for delivery, or changes in amount of delivery, shall be made by SRP twenty-four

(24) hours in advance of the delivery date and prior to three o'clock p.m. on the day such request is made. Unless otherwise mutually agreed in writing, SRP's requests for delivery shall be made by SRP's authorized representative to the authorized representative of RID's Administrative Offices in Buckeye, Arizona, and may be verbal or in writing, provided verbal requests are confirmed monthly in writing mailed to the Superintendent of RID at RID's Administrative Offices, P.O. Box 94, Buckeye, Arizona 85326. SRP's requests, both written and verbal, shall specify the location of delivery, the rate of flow and the duration of run. The amount delivered, at the times and locations requested, shall not impede RID's ability to fully satisfy RID's and RID's customers' then existing water delivery needs.

Section 3. The dates and amounts of RID's deliveries to SRP shall be confirmed monthly in writing mailed to: Salt River Project, Hydrology Division, P.O. Box 52025, Phoenix, Arizona 85072-2025.

EXHIBIT "3.1"

Plan 6 Agreement Approval -
City of Tucson

ADOPTED BY THE
MAYOR AND COUNCIL

AUG 07 1989

RESOLUTION NO. 15014

RELATING TO WATER; AUTHORIZING THE MAYOR TO EXECUTE A LETTER OF AGREEMENT ALLOWING THE USE OF DESIGNATED STORAGE SPACE IN ROOSEVELT DAM TO ASSIST IN THE RESOLUTION OF WATER RIGHTS LITIGATION INVOLVING THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to execute for and on behalf of the City of Tucson the letter authorizing use of designated water storage space in Roosevelt Dam to facilitate the settlement of water rights litigation involving the Salt River Pima-Maricopa Indian Community, which letter is attached hereto as Exhibit A, and the City Clerk is directed to attest the same.

SECTION 2. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

SECTION 3. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become immediately effective, an emergency is hereby declared to exist and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, AUG 0 7 1989.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

FR/tr
7/24/89

EXHIBIT A TO RESOLUTION NO. 15014

July 17, 1989

The Honorable Thomas Volgy
Mayor
CITY OF TUCSON
Post Office Box 27210
Tucson, Arizona 85726-7210

Re: SRPMIC Settlement Agreement
Modification of the Plan 6 Agreement

Dear Mayor Volgy:

In order to assist in the resolution of outstanding water litigation relating to the Salt River Pima-Maricopa Indian Community ("SRPMIC"), the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe have agreed to permit SRPMIC to jointly use Plan 6 storage space in modified Roosevelt Dam for storage of the SRPMIC Kent-Decree entitlement. Paragraphs 7.0 and 7.6 of the SRPMIC Settlement Agreement, attached for your convenience, provide that "designated space" of the additional active conservation capacity in Roosevelt Dam shall be used "to accomplish other Plan 6 purposes when not needed to re-regulate SRPMIC's Kent-Decree entitlement." Subject to Paragraph 7.2 of the SRPMIC Agreement, the United States will forgive a portion of the non-federal funding associated with this designated space. Paragraph 7.2 is also attached for your review.

In the negotiations of this settlement contract, a question arose of whether storing tribal water in Plan 6 facilities was tantamount to an amendment to the Plan 6 up-front funding contract. Fortunately, nearly all of the signatories to the Plan 6 Agreement are parties to the SRPMIC Settlement Agreement and have, pursuant to the settlement agreement, agreed to such use of the Additional Active Conservation capacity and to the adjustment of the funding obligation. However, the City of Tucson and the Maricopa County Flood Control District are not parties to the settlement agreement. Consequently, we are requesting your approval and the Maricopa County Flood Control District's approval of this arrangement.

A line has been included below for your signature. If the City of Tucson is in agreement that the conservation space may be utilized, in part, for the storage of tribal water supplies, that the funding obligation may be adjusted and is willing to waive any objections to such use, please indicate your approval by signing and returning the original of this letter.

CITY OF CHANDLER

By _____
Mayor Richard Dugan

CITY OF GLENDALE

By _____
Mayor George R. Renner

CITY OF MESA

By _____
~~Mayor Peggy Rubach~~ C. K. Luster,
City Manager

CITY OF PHOENIX

By _____
Mayor Terry Goddard

CITY OF SCOTTSDALE

By _____
Mayor Herbert R. Drinkwater

CITY OF TEMPE

By _____
Mayor Harry E. Mitchell

ACCEPTED AND APPROVED:

CITY OF TUCSON

By _____
Mayor Thomas Volgy

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

for _____
City Attorney

enclosures

EXHIBIT A TO RESOLUTION NO. 15014

July 17, 1989

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Mayor
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Post Office Box 27210
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CITY OF GLENDALE

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By_____
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CITY OF PHOENIX

By_____
Mayor Terry Goddard

CITY OF SCOTTSDALE

By_____
Mayor Herbert R. Drinkwater

CITY OF TEMPE

By_____
Mayor Harry E. Mitchell

ACCEPTED AND APPROVED:

CITY OF TUCSON

By_____
Mayor Thomas Volgy

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

for _____
City Attorney

enclosures

7.0 KENT DECREE WATER

7.1 Historically, SRPMIC has used only a part of its Kent Decree entitlement to the normal flow of the Salt and Verde Rivers due to demand being less than available supply during parts of the year. SRPMIC is unable to store surplus portions of its normal flow entitlements for future use. In order that SRPMIC may use more fully its Kent Decree water entitlement, the United States will designate for use by SRPMIC for storage of Kent Decree water 7,000 acre-feet (hereinafter "Designated Space") of the Additional Active Conservation Capacity. The SRPMIC will be assessed evaporation losses using the same formula as arrived at under Plan 6 for the Plan 6 participants as provided in Paragraph 5.26(b) of Exhibit "C" of the Plan 6 Agreement, with the participation of SRPMIC. In order to assure that Additional Active Conservation Capacity is available to SRPMIC, the Secretary agrees that each annual budget estimate submitted to the Executive Office of the President of the United States by the Department of the Interior shall include sufficient funding, in accordance with the Plan 6 Agreement as amended or modified. SRPMIC agrees to support the authorization for funding and modification of Roosevelt Dam as an integral part of the Plan 6 facilities.

7.2 The Designated Space will be for seasonal re-regulation only (no annual carry over past October 1) and will be made available to accomplish other Plan 6 purposes when not needed to re-regulate SRPMIC's Kent Decree entitlement. No part of the Plan 6 or SRP water supply will accrue to the United States or the SRPMIC under this Paragraph 7.0. The costs of the Designated Space shall be non-reimbursable, and the United States will forgive a portion of the non-

Federal funding obligation associated with the Designated Space. The amount of the costs so forgiven will be the ratio of number of acre-feet of Designated Space to the Additional Active Conservation Capacity multiplied by the amount the cities have agreed to contribute for that capacity under the Plan 6 Agreement.

7.3 Chandler, Glendale, Mesa, Phoenix, Scottsdale, Tempe, the United States, CAWCD, and SRP will cooperate with SRPMIC in obtaining any necessary State or Federal approval for joint use of the Designated Space or existing temporary space in SRP reservoirs consistent with this Paragraph 7.0. All parties to this Agreement shall refrain from initiating or supporting any legislative, administrative, or judicial proceeding challenging Plan 6. The Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, the United States, CAWCD, and SRP agree that to the extent the provisions of Paragraphs 7.1, 7.2, and 7.3 hereof are contrary to the provisions of the Plan 6 Agreement, Paragraphs 7.1 through 7.3 hereof shall control.

7.4 SRP will provide temporary storage for the 7,000 acre-feet referred to in Paragraph 7.1 hereof in its existing reservoirs on the Salt River for SRPMIC Kent Decree water until the earlier of:

(a) the construction of Additional Active Conservation Capacity is completed;

(b) a declaration is made by the United States that such Capacity will not be constructed; or

. . .

. . .

(c) December 31, 2005;

Provided, however, that this temporary storage entitlement shall always be subject to spill as provided in Paragraph 21.9 hereof and that evaporation will be charged monthly at the rate of one-half of one percent of the Kent Decree stored water balance at the end of each month. The temporary storage will be for seasonal re-regulation only (no annual carry over past October 1).

7.5 In the event of the occurrence of either condition described in Paragraph 7.4(b) or 7.4(c) hereof, and to satisfy the requirements of Paragraph 7.1 hereof, the United States will provide water from sources other than the Salt or Verde Rivers at no cost or expense to SRPMIC and at no cost or expense to the Plan 6 participants. The expenditure or advance of money, the performance of any work, or the supply of substitute water by the United States under this Paragraph 7.5 which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made.

7.6 The Kent Decree water will be used only on SRPMIC Reservation lands south of the Arizona Canal and inside the exterior boundary of the SRRD.

8.0 ADDITIONAL STORED WATER

8.1 "Stored Water" is defined as that amount of water delivered to SRPMIC by SRP from SRP reservoirs up to 9,074 acre-feet per year pursuant to Paragraphs 6.1 and 8.2 hereof.

. . .

7.0 KENT DECREE WATER

7.1 Historically, SRPMIC has used only a part of its Kent Decree entitlement to the normal flow of the Salt and Verde Rivers due to demand being less than available supply during parts of the year. SRPMIC is unable to store surplus portions of its normal flow entitlements for future use. In order that SRPMIC may use more fully its Kent Decree water entitlement, the United States will designate for use by SRPMIC for storage of Kent Decree water 7,000 acre-feet (hereinafter "Designated Space") of the Additional Active Conservation Capacity. The SRPMIC will be assessed evaporation losses using the same formula as arrived at under Plan 6 for the Plan 6 participants as provided in Paragraph 5.26(b) of Exhibit "C" of the Plan 6 Agreement, with the participation of SRPMIC. In order to assure that Additional Active Conservation Capacity is available to SRPMIC, the Secretary agrees that each annual budget estimate submitted to the Executive Office of the President of the United States by the Department of the Interior shall include sufficient funding, in accordance with the Plan 6 Agreement as amended or modified. SRPMIC agrees to support the authorization for funding and modification of Roosevelt Dam as an integral part of the Plan 6 facilities.

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Federal funding obligation associated with the Designated Space. The amount of the costs so forgiven will be the ratio of number of acre-feet of Designated Space to the Additional Active Conservation Capacity multiplied by the amount the cities have agreed to contribute for that capacity under the Plan 6 Agreement.

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. . .

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8.1 "Stored Water" is defined as that amount of water delivered to SRPMIC by SRP from SRP reservoirs up to 9,074 acre-feet per year pursuant to Paragraphs 6.1 and 8.2 hereof.

. . .

ADDENDUM
to
Exhibit "3.1"

FLOOD CONTROL
DISTRICT
of
MARICOPA
COUNTY
1959

October 16, 1989

RECEIVED
OCT 2 7
R.C.&A.

Plan 6 Participants
Michael J. Brophy, Esquire
Ryley, Carlock & Applewhite
101 North First Avenue, Suite 2600
Phoenix, Arizona 85003-1973

SUBJECT: Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement Modification of the Plan 6 Agreement

Dear Mr. Brophy and Plan 6 Participants:

In order to assist in the resolution of outstanding water litigation relating to the Salt River Pima-Maricopa Indian Community ("SRPMIC"), the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe have agreed to permit SRPMIC to jointly use Plan 6 storage space in modified Roosevelt Dam for storage of the SRPMIC Kent-Decree entitlement. Paragraphs 7.0 and 7.6 of the SRPMIC Settlement Agreement provide that "designated space" of the additional active conservation capacity in Roosevelt Dam shall be used "to accomplish other Plan 6 purposes when not needed to re-regulate SRPMIC's Kent-Decree entitlement." Subject to Paragraph 7.2 of the SRPMIC Agreement, the United States will forgive a portion of the non-federal funding associated with this designated space.

During negotiations of this settlement contract, a question arose as to whether storing tribal water in Plan 6 facilities was tantamount to an amendment to the Plan 6 up-front funding contract. Unlike nearly all of the signatories to the Plan 6 Agreement, the Flood Control District of Maricopa County is not a party to the SRPMIC Settlement Agreement, and has not, pursuant to the settlement agreement, agreed to such use of the Additional Active Conservation capacity and to the adjustment of the funding obligation.

The Board of Directors of the Flood Control District of Maricopa County concurred by the enclosed agenda item, which was approved on October 2, 1989 that per the terms of the SRPMIC Settlement Agreement, the conservation space may be utilized, in part, for the storage of tribal water supplies, and that the funding obligation may be adjusted and waives any objections to such use.

Sincerely,

Tom Freestone, Chairman
Board of Directors
Flood Control District of Maricopa County

Enclosure

Copy w/ enclosure to:

Mayor Richard Dugan, City of Chandler
Mayor George R. Renner, City of Glendale
Mayor Peggy Rubach, City of Mesa
Mayor Terry Goddard, City of Phoenix
Mayor Herbert R. Drinkwater, City of Scottsdale
Mayor Harry E. Mitchell, City of Tempe

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

AGENDA INFORMATION FORM

Contract/Lease for ☐ NEW ☒ RENEWAL ☐ AMENDMENT ☐ CANCELLATION
(for existing record Encumbrance No. below)

LOW ORG. NO. 6900 DEPARTMENT: Flood Control District CONTROL NUMBER: FCD-1006

ENCUMBRANCE NO. _____ AGENCY: Public Works CONTROL NUMBER: PW-1006

1. BRIEF DESCRIPTION OF PROPOSAL AND REQUESTED BOARD ACTION: The Cities who are signatories to the Plan 6 funding Agreement have requested that the District concur in the "designation" and use of conservation storage capacity at the modified Roosevelt Dam by the Salt River Pima Maricopa Indian Community (SRPMIC) as stipulated in the Water Rights Settlement Agreement among the Cities and the SRPMIC.

2. Compliance with Maricopa County Procurement Code N/A (article) . N/A (paragraph) . _____ (Procurement Officer)

3. CONTINUED FROM MEETING OF
DISCUSSED IN MEETING OF

4. ☐ **THIS DEPARTMENT WILL CAUSE PUBLICATION**
☐ **CLERK OF THE BOARD TO CAUSE PUBLICATION**

5. MOTION: It is moved that the Flood Control District of Maricopa County Board of Directors ... concur in use of conservation space in modified Roosevelt Dam by the Salt River Pima Maricopa Indian Community as stipulated in the Water Rights Settlement Agreement with the Cities who are signatories to the Plan 6 funding agreement and authorize the Chairman to execute necessary documents to indicate such concurrence.

6. FINANCIAL: ☐ Expenditure ☐ Revenue ☐ Budgeted ☐ Contingency ☐ Budget Amendment ☐ Transfer ☐ Grant or other

$ _____ (Total) _____ (Fund) _____ (Financial Officer) _____ (Date)

7. PERSONNEL:
_____ (Personnel Director) _____ (Date)

8. FLOOD CONTROL DISTRICT:
[signature] (Action Recommended by) 9-13-89 (Date)

9. MATERIALS MANAGEMENT:
A. _____ (Materials Management Director) _____ (Date)
B. _____ (W MBE Representative) _____ (Date)

10. LEGAL: Approved as to form and within the powers and authority granted under the laws of the state of Arizona to the Flood Control District of Maricopa County Board of Directors
_____ (General Counsel) _____ (Date)

11. INFORMATION SYSTEMS: _____ (FISC)
_____ (Date)

12. APPROVED FOR AGENDA:
_____ (Approving Official) _____ (Date)

13. OTHER:
_____ (Signature) _____ (Date)

14. BOARD OF DIRECTORS: Action taken:
☑ Approved ☐ Amended ☐ Disapproved ☐ Deleted
Continued to: _____ (Date and type of meeting)
[signature] OCT 2 1989
(Clerk of the Board) (Date)

15. RECOMMENDATION OF COUNTY MANAGER:
☐ Approve ☐ Disapprove
Comments:
_____ (County Manager) _____ (Date)

6900-012 R3-89

EXHIBIT "3.m.1"

City of Chandler - SRPMIC Project Water Lease Agreement

PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the City of Chandler, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 (the "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed a First

. . .

Amendment to the CAP Delivery Contract which authorizes the Lessor to make this Project Water Lease Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

3. LEASE OF PROJECT WATER

3.1 Subject of Lease. The Lessor leases to the Lessee the right to the delivery of 2,586 acre-feet per year of Project Water under the CAP Delivery Contract, subject to the terms and conditions of the CAP Delivery Contract except as modified herein.

3.2 Term of Lease. The term of this Project Water Lease Agreement shall commence on January 1, 2000, and end on December 30, 2098.

3.3 Lessee's Payment for Lease. The consideration for this Project Water Lease Agreement is the payment by the Lessee to the Lessor of the sum of $3,112,000, which amount is due and payable on the effective date of this Project Water Lease Agreement. In lieu of making payment in full upon the effective date of this Project Water Lease Agreement, the Lessee may elect to make payment in either of the following ways:

A. An initial down payment of $1,556,000 on the effective date of this Project Water Lease Agreement, with four (4) annual payments, payable on the next four (4) anniversary dates of the effective date of this Project Water Lease Agreement, of $389,000 each, together with interest on the unpaid balance at an annual rate determined as fol-

lows: one percent (1%) over the net interest rate paid by the City of Phoenix on its Water Renewal Refunding Bonds, Series 1986, determined as of the effective date of this Project Water Lease Agreement. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent.

B. An initial payment of $389,000 on the effective date of this Project Water Lease Agreement, with seven (7) annual payments payable on the next seven (7) anniversary dates of the effective date of this Project Water Lease Agreement of $389,000 each, together with interest on the unpaid balance at an annual rate of one percent (1%) over the Valley National Bank Home Office prime rate determined as of the effective date of this Project Water Lease Agreement.

Interest under this subparagraph B shall be calculated as follows: If, for example, the Lessee elects to pay under this subparagraph B, and the Valley National Bank Home Office prime rate as of the effective date of this Lease is seven percent (7%), the second annual installment shall be in the principal amount of $389,000 plus interest in the amount of $217,840, for a total payment of $606,840. The third annual installment shall be in the principal amount of $389,000 plus interest in the amount of $186,720, for a total payment of $575,720.

Without any prepayment penalty, the Lessee may at any time elect to pay the balance in full together with interest on the unpaid balance to the date of such payment.

3.4 Operation, Maintenance and Replacement Costs. The Lessee shall pay the full amount of the water service charges for operation, maintenance and replacement costs for the Project Water to the United States or, if so directed by the Secretary, to the Central Arizona Water Conservation District ("CAWCD") in accordance with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract, except that the Lessee's obligation to pay operation, maintenance and replacement charges shall not begin earlier than October 1, 1998.

3.5 Other Charges or Payments. The Lessee shall not be obligated to pay water service capital charges or M&I subcontract charges or any other charges or payments for the Project Water other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of this Project Water Lease Agreement. The Lessee shall pay any charges or payments imposed against the Lessor with respect to the leased Project Water during the term of this Project Water Lease Agreement.

3.6 Delivery of Water. The United States or CAWCD shall deliver the Lessor's Project Water to the Lessee as further provided herein; however, neither the United States nor CAWCD shall be obligated to make such deliveries if, in the judgment of CAWCD or the Secretary, delivery or schedule of deliveries to the Lessee would limit deliveries of CAP water to other CAP subcontractors to

a degree greater than deliveries to the Lessor. The United States or CAWCD shall deliver water to the Lessee in accordance with water delivery schedules provided by the Lessee to the United States and CAWCD. The water ordering procedures contained in Article 4.4 of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee's ordering of water under this Project Water Lease Agreement. In no event shall the United States or CAWCD be required to deliver to the Lessee from the Water Supply System in any one month a total amount of Project Water greater than eleven percent (11%) of the Lessee's maximum entitlement under this Project Water Lease Agreement; provided, however, that the United States or CAWCD may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to all CAP subcontractors as determined by the United States and CAWCD if the Lessee agrees to accept such increased deliveries.

3.6.1 Sharing of Shortages. In the event of a shortage resulting in the Lessor's share of Project Water under the CAP Delivery Contract falling below 13,300 acre feet in any year, such shortage shall be shared pro rata among the Arizona Cities of Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the Arizona Town of Gilbert in accordance with the percentages set forth in Paragraph 19.6 of the SRPMIC Agreement.

3.7 Use of Project Water Outside Reservation. The Lessee may use or deliver Project Water for use outside the boundaries of the reservation, but may not use or deliver Project Water for use outside of the boundaries of CAWCD.

3.8 Conditions Relating to Delivery and Use. Lessee shall have the right to use water received under this Project Water Lease Agreement for any purpose consistent with Arizona law, including ground water recharge as that term is defined in Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, as amended on December 1, 1988, hereinafter referred to as the "Repayment Contract." Deliveries of Project Water to the Lessee and its use by the Lessee shall be subject to the Conditions Relating to Delivery and Use in Article 4.3 of the Lessee's CAP M&I Water Service Subcontract. During the term of this Project Water Lease Agreement, the following subarticles or articles of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee and to the Lessee's use of water under this Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11. and 6.13. Lessee expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

3.9 Secretarial Control of Return Flow. Project Water used by the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be subject to the terms relating to the Secretary's right to control return flow as provided in Article 4.8 of the Lessee's CAP M&I Water Service Subcontract.

. . .

3.10 Points of Delivery. The Project Water to be delivered to the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be delivered at turnouts to be constructed by the United States at such points on the Water Supply System as have been previously agreed upon by the Contracting Officer and the Lessee in accordance with the provisions of Article 4.5 of the Lessee's CAP M&I Water Service Subcontract.

3.11 Lessor's Covenants. The Lessor agrees:

A. To observe and perform all obligations imposed on the Lessor under the CAP Delivery Contract which are not assumed by the Lessee so that the Lessee's rights and duties are not in any way impaired;

B. Not to execute any other lease of the Lessor's right to the delivery of Project Water under the CAP Delivery Contract which would impair the Lessee's rights and duties hereunder;

C. Not to alter or modify the terms of the CAP Delivery Contract, except as provided herein, in such a way as to impair the Lessee's rights hereunder or exercise any option required or permitted by the CAP Delivery Contract so as to interfere with or change the rights and obligations of the Lessee hereunder; and

. . .

. . .

. . .

. . .

D. Not to terminate or cancel the CAP Delivery Contract or transfer, convey or permit a transfer or conveyance of the Contract so as to cause a termination of, interference with, or modification of the rights and obligations under the CAP Delivery Contract.

3.12 Lessee Assignment. The Lessee may not transfer, assign or sublease all or any part of its interest in Project Water outside the boundaries of its existing or future service area without the prior written consent of the Lessor and the Secretary; provided that the Lessee shall not transfer, assign, or sublease all or any part of its interest in Project Water hereunder for an amount in excess of that which the Lessee is obligated to pay under this Project Water Lease Agreement without the additional prior written approval of CAWCD and the Secretary. If Project Water under this Project Water Lease Agreement is transferred, assigned or subleased by the Lessee for an amount in excess of that which the Lessee paid for such water under this Project Water Lease Agreement, the excess amount shall be paid forthwith by the Lessee to the CAWCD for application against CAWCD's repayment obligation to the United States; Provided, however, That the Lessee shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs. The Lessee shall not transfer, assign or sublease all or any part of its interest in Project Water if such transfer, assignment or sublease will adversely affect the Lessor without the prior written approval of Lessor. Lessee shall provide to CAWCD and the United

States copies of any agreement transferring, assigning or subleasing all or any portion of Lessee's entitlement under this Project Water Lease Agreement. Approval is hereby granted by the Secretary and the Lessor to the Lessee for the transfer, assignment or sublease of all or any part of its interest in Project Water under this Project Water Lease Agreement to the Arizona Cities of Phoenix, Glendale, Mesa, Scottsdale and Tempe, and the Arizona Town of Gilbert, or to its successor(s) in interest within the boundaries of its existing or future service area. Such approval shall be effective only upon the agreement by such transferee, assignee, or sublessee to pay all applicable water service charges associated with the delivery of Project Water, and otherwise to abide by all terms and conditions of this Project Water Lease Agreement.

3.13 CAWCD Repayment. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of water pursuant to this Water Project Lease Agreement shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

4. GENERAL PROVISIONS

4.1 United States Consent to Lease. The United States hereby approves and consents to this Project Water Lease Agreement.

4.2 Effective Date. This Project Water Lease Agreement shall become effective on the enforceability date of the SRPMIC Agreement as set forth in Paragraph 21.6 thereof.

4.3 Effect of SRPMIC Agreement. On the enforceability date of the SRPMIC Agreement, this Project Water Lease Agreement shall be effective and enforceable between the Lessor and the Lessee notwithstanding the performance or non-performance of other provisions of the SRPMIC Agreement not related to this Project Water Lease Agreement. The provisions of the SRPMIC Agreement that are related to this Project Water Lease Agreement are set forth in Paragraph 19.0 of the SRPMIC Agreement.

4.4 Invalidity of Agreement. If the Lessee's entitlement to Project Water under this Project Water Lease Agreement is determined to be invalid by a final judgment entered over the objection of the Lessee with the result that the Lessor reacquires the right to receive the Project Water, then the Lessor shall refund to the Lessee that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term.

4.5 Curing for Lessee's Nonpayment. If the initial payment is not made on or before the date such payment is due, or if any successive lease payment is not made on the date such payment is due, the Lessee shall be in default and the Lessor shall give written notice of default to the defaulting Lessee. The Lessor shall also send a copy of the notice of default to each other party to the SRPMIC Agreement which has entered into a Project Water Lease Agreement for the lease of the Lessor's Project Water ("Other Cities"). Notice shall be given in the manner and to the city officers specified in Paragraph 21.17 of the SRPMIC Agreement. The

notice of default shall specifically describe the default and state the amount due by such Lessee ("Default Amount"). After notice of default, the rights of the Lessee, the Lessor and the Other Cities shall be as follows:

A. During the first thirty (30) days following the notice of default ("First Grace Period"), the defaulting Lessee shall have the exclusive right to cure any such default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. During the First Grace Period, the defaulting Lessee may cure only by tendering the Default Amount.

B. In the event that the defaulting Lessee has not cured within thirty (30) days following the notice of default, the Lessee, any of the Other Cities, and/or any combination thereof, may thereafter, but within sixty (60) days following the notice of default ("Second Grace Period"), cure the default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. Each curing city or town shall succeed to the interest of the defaulting Lessee to the extent of its contribution. A cure effected pursuant to this section shall constitute full performance of such payment obligation.

. . .

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of $3,112,000 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By _____
Bureau of Indian Affairs

By _____
Bureau of Reclamation

Attest:

_____

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____
Name: _____
Title: _____

Attest:

_____
City Clerk

CITY OF CHANDLER, an Arizona municipal corporation

Attest:

_____

By _____
Name: RICHARD DUGAN
Title: MAYOR

APPROVED AS TO FORM:

Signature _____
City Attorney for the
City of Chandler

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of $3,112,000 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By _____
Bureau of Indian Affairs

By _____
Bureau of Reclamation

Attest: _____

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____
Name: Gerald Anton
Title: President

Attest: _____
City Clerk

CITY OF CHANDLER, an Arizona municipal corporation

Attest: _____

By _____
Name: _____
Title: _____

EXHIBIT "3.m.2"

City of Glendale - SRPMIC Project Water Lease Agreement

PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the City of Glendale, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 (the "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed

. . .

a First Amendment to the CAP Delivery Contract which authorizes the Lessor to make this Project Water Lease Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

3. LEASE OF PROJECT WATER

3.1 Subject of Lease. The Lessor leases to the Lessee the right to the delivery of 1,814 acre-feet per year of Project Water under the CAP Delivery Contract, subject to the terms and conditions of the CAP Delivery Contract except as modified herein.

3.2 Term of Lease. The term of this Project Water Lease Agreement shall commence on January 1, 2000, and end on December 30, 2098.

3.3 Lessee's Payment for Lease. The consideration for this Project Water Lease Agreement is the payment by the Lessee to the Lessor of the sum of $2,182,400, which amount is due and payable on the effective date of this Project Water Lease Agreement. In lieu of making payment in full upon the effective date of this Project Water Lease Agreement, the Lessee may elect to make payment in either of the following ways:

A. An initial down payment of $1,091,200 on the effective date of this Project Water Lease Agreement, with four (4) annual payments, payable on the next four (4) anniversary dates of the effective date of this Project Water Lease Agreement, of $272,800 each, together with

interest on the unpaid balance at an annual rate determined as follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its Water Renewal Refunding Bonds, Series 1986, determined as of the effective date of this Project Water Lease Agreement. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent.

B. An initial payment of $272,800 on the effective date of this Project Water Lease Agreement, with seven (7) annual payments payable on the next seven (7) anniversary dates of the effective date of this Project Water Lease Agreement of $272,800 each, together with interest on the unpaid balance at an annual rate of one percent (1%) over the Valley National Bank Home Office prime rate determined as of the effective date of this Project Water Lease Agreement.

Interest under this subparagraph B shall be calculated as follows: If, for example, the Lessee elects to pay under this subparagraph B, and the Valley National Bank Home Office prime rate as of the effective date of this Lease is seven percent (7%), the second annual installment shall be in the principal amount of $272,800 plus interest in the amount of $152,768, for a total payment of $425,568. The third annual installment shall be in the

principal amount of $272,800 plus interest in the amount of $130,944, for a total payment of $403,744.

Without any prepayment penalty, the Lessee may at any time elect to pay the balance in full together with interest on the unpaid balance to the date of such payment.

3.4 Operation, Maintenance and Replacement Costs. The Lessee shall pay the full amount of the water service charges for operation, maintenance and replacement costs for the Project Water to the United States or, if so directed by the Secretary, to the Central Arizona Water Conservation District ("CAWCD") in accordance with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract, except that the Lessee's obligation to pay operation, maintenance and replacement charges shall not begin earlier than October 1, 1998.

3.5 Other Charges or Payments. The Lessee shall not be obligated to pay water service capital charges or M&I subcontract charges or any other charges or payments for the Project Water other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of this Project Water Lease Agreement. The Lessee shall pay any charges or payments imposed against the Lessor with respect to the leased Project Water during the term of this Project Water Lease Agreement.

3.6 Delivery of Water. The United States or CAWCD shall deliver the Lessor's Project Water to the Lessee as further provided herein; however, neither the United States nor CAWCD shall be obligated to make such deliveries if, in the judgment of CAWCD

or the Secretary, delivery or schedule of deliveries to the Lessee would limit deliveries of CAP water to other CAP subcontractors to a degree greater than deliveries to the Lessor. The United States or CAWCD shall deliver water to the Lessee in accordance with water delivery schedules provided by the Lessee to the United States and CAWCD. The water ordering procedures contained in Article 4.4 of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee's ordering of water under this Project Water Lease Agreement. In no event shall the United States or CAWCD be required to deliver to the Lessee from the Water Supply System in any one month a total amount of Project Water greater than eleven percent (11%) of the Lessee's maximum entitlement under this Project Water Lease Agreement; provided, however, that the United States or CAWCD may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to all CAP subcontractors as determined by the United States and CAWCD if the Lessee agrees to accept such increased deliveries.

3.6.1 Sharing of Shortages. In the event of a shortage resulting in the Lessor's share of Project Water under the CAP Delivery Contract falling below 13,300 acre feet in any year, such shortage shall be shared pro rata among the Arizona Cities of Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the Arizona Town of Gilbert in accordance with the percentages set forth in Paragraph 19.6 of the SRPMIC Agreement.

3.7 Use of Project Water Outside Reservation. The Lessee may use or deliver Project Water for use outside the

boundaries of the reservation, but may not use or deliver Project Water for use outside of the boundaries of CAWCD.

3.8 Conditions Relating to Delivery and Use. Lessee shall have the right to use water received under this Project Water Lease Agreement for any purpose consistent with Arizona law, including ground water recharge as that term is defined in Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, as amended on December 1, 1988, hereinafter referred to as the "Repayment Contract." Deliveries of Project Water to the Lessee and its use by the Lessee shall be subject to the Conditions Relating to Delivery and Use in Article 4.3 of the Lessee's CAP M&I Water Service Subcontract. During the term of this Project Water Lease Agreement, the following subarticles or articles of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee and to the Lessee's use of water under the Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Lessee expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided.

3.9 Secretarial Control of Return Flow. Project Water used by the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be subject to the terms relating to the

. . .

Secretary's right to control return flow as provided in Article 4.8 of the Lessee's CAP M&I Water Service Subcontract.

3.10 Points of Delivery. The Project Water to be delivered to the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be delivered at turnouts to be constructed by the United States at such points on the Water Supply System as have been previously agreed upon by the Contracting Officer and the Lessee in accordance with the provisions of Article 4.5 of the Lessee's CAP M&I Water Service Subcontract.

3.11 Lessor's Covenants. The Lessor agrees:

A. To observe and perform all obligations imposed on the Lessor under the CAP Delivery Contract which are not assumed by the Lessee so that the Lessee's rights and duties are not in any way impaired;

B. Not to execute any other lease of the Lessor's right to the delivery of Project Water under the CAP Delivery Contract which would impair the Lessee's rights and duties hereunder;

C. Not to alter or modify the terms of the CAP Delivery Contract, except as provided herein, in such a way as to impair the Lessee's rights hereunder or exercise any option required or permitted by the CAP Delivery Contract so as to interfere with or change the rights and obligations of the Lessee hereunder; and

D. Not to terminate or cancel the CAP Delivery Contract or transfer, convey or permit a transfer or conveyance of the Contract so as to cause a termination of, interference with, or modification of the rights and obligations under the CAP Delivery Contract.

3.12 Lessee Assignment. The Lessee may not transfer, assign or sublease all or any part of its interest in Project Water outside the boundaries of its existing or future service area without the prior written consent of the Lessor and the Secretary; provided that the Lessee shall not transfer, assign, or sublease all or any part of its interest in Project Water hereunder for an amount in excess of that which the Lessee is obligated to pay under this Project Water Lease Agreement without the additional prior written approval of CAWCD and the Secretary. If Project Water under this Project Water Lease Agreement is transferred, assigned or subleased by the Lessee for an amount in excess of that which the Lessee paid for such water under this Project Water Lease Agreement, the excess amount shall be paid forthwith by the Lessee to the CAWCD for application against CAWCD's repayment obligation to the United States; Provided, however, That the Lessee shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs. The Lessee shall not transfer, assign or sublease all or any part of its interest in Project Water if such transfer, assignment or sublease will adversely affect the Lessor without the prior

written approval of Lessor. Lessee shall provide to CAWCD and the United States copies of any agreement transferring, assigning or subleasing all or any portion of Lessee's entitlement under this Project Water Lease Agreement. Approval is hereby granted by the Secretary and the Lessor to the Lessee for the transfer, assignment or sublease of all or any part of its interest in Project Water under this Project Water Lease Agreement to the Arizona Cities of Phoenix, Chandler, Mesa, Scottsdale and Tempe, and the Arizona Town of Gilbert, or to its successor(s) in interest within the boundaries of its existing or future service area. Such approval shall be effective only upon the agreement by such transferee, assignee, or sublessee to pay all applicable water service charges associated with the delivery of Project Water, and otherwise to abide by all terms and conditions of this Project Water Lease Agreement.

3.13 CAWCD Repayment. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of water pursuant to this Water Project Lease Agreement shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

4. GENERAL PROVISIONS

4.1 United States Consent to Lease. The United States hereby approves and consents to this Project Water Lease Agreement.

. . .

. . .

4.2 Effective Date. This Project Water Lease Agreement shall become effective on the enforceability date of the SRPMIC Agreement as set forth in Paragraph 21.6 thereof.

4.3 Effect of SRPMIC Agreement. On the enforceability date of the SRPMIC Agreement, this Project Water Lease Agreement shall be effective and enforceable between the Lessor and the Lessee notwithstanding the performance or non-performance of other provisions of the SRPMIC Agreement not related to this Project Water Lease Agreement. The provisions of the SRPMIC Agreement that are related to this Project Water Lease Agreement are set forth in Paragraph 19.0 of the SRPMIC Agreement.

4.4 Invalidity of Agreement. If the Lessee's entitlement to Project Water under this Project Water Lease Agreement is determined to be invalid by a final judgment entered over the objection of the Lessee with the result that the Lessor reacquires the right to receive the Project Water, then the Lessor shall refund to the Lessee that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term.

4.5 Curing for Lessee's Nonpayment. If the initial payment is not made on or before the date such payment is due, or if any successive lease payment is not made on the date such payment is due, the Lessee shall be in default and the Lessor shall give written notice of default to the defaulting Lessee. The Lessor shall also send a copy of the notice of default to each other party to the SRPMIC Agreement which has entered into a

Project Water Lease Agreement for the lease of the Lessor's Project Water ("Other Cities"). Notice shall be given in the manner and to the city officers specified in Paragraph 21.17 of the SRPMIC Agreement. The notice of default shall specifically describe the default and state the amount due by such Lessee ("Default Amount"). After notice of default, the rights of the Lessee, the Lessor and the Other Cities shall be as follows:

A. During the first thirty (30) days following the notice of default ("First Grace Period"), the defaulting Lessee shall have the exclusive right to cure any such default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. During the First Grace Period, the defaulting Lessee may cure only by tendering the Default Amount.

B. In the event that the defaulting Lessee has not cured within thirty (30) days following the notice of default, the Lessee, any of the Other Cities, and/or any combination thereof, may thereafter, but within sixty (60) days following the notice of default ("Second Grace Period"), cure the default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the

annual rate of ten percent (10%) calculated from the due date. Each curing city or town shall succeed to the interest of the defaulting Lessee to the extent of its contribution. A cure effected pursuant to this section shall constitute full performance of such payment obligation.

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of $2,182,400 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By _____
Bureau of Indian Affairs

By _____
Bureau of Reclamation

. . .

. . .

Attest:

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____
Name: Gerald Anton
Title: President

Attest:

CITY OF GLENDALE, an Arizona municipal corporation

_____
City Clerk

Attest:

By _____
Name: _____
Title: _____

_____

Attest:

_____

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____
Name: _____
Title: _____

Attest:

Julie Lehm
City Clerk

CITY OF GLENDALE, an Arizona municipal corporation

Attest:

By _____
Name: George B. Renner
Title: Mayor

EXHIBIT "3.m.3"

City of Scottsdale - SRPMIC Project Water Lease Agreement

PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the City of Scottsdale, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed a First

. . .

Amendment to the CAP Delivery Contract which authorizes the Lessor to make this Project Water Lease Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

3. LEASE OF PROJECT WATER

3.1 Subject of Lease. The Lessor leases to the Lessee the right to the delivery of 60 acre-feet per year of Project Water under the CAP Delivery Contract, subject to the terms and conditions of the CAP Delivery Contract except as modified herein.

3.2 Term of Lease. The term of this Project Water Lease Agreement shall commence on January 1, 2000, and end on December 30, 2098.

3.3 Lessee's Payment for Lease. The consideration for this Project Water Lease Agreement is the payment by the Lessee to the Lessor of the sum of $72,000, which amount is due and payable on the effective date of this Project Water Lease Agreement. In lieu of making payment in full upon the effective date of this Project Water Lease Agreement, the Lessee may elect to make payment in either of the following ways:

A. An initial down payment of $36,000 on the effective date of this Project Water Lease Agreement, with four (4) annual payments, payable on the next four (4) anniversary dates of the effective date of this Project Water Lease Agreement, of $9,000 each, together with interest on the unpaid balance at an annual rate determined as follows:

one percent (1%) over the net interest rate paid by the City of Phoenix on its Water Renewal Refunding Bonds, Series 1986, determined as of the effective date of this Project Water Lease Agreement. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent.

B. An initial payment of $9,000 on the effective date of this Project Water Lease Agreement, with seven (7) annual payments payable on the next seven (7) anniversary dates of the effective date of this Project Water Lease Agreement of $9,000 each, together with interest on the unpaid balance at an annual rate of one percent (1%) over the Valley National Bank Home Office prime rate determined as of the effective date of this Project Water Lease Agreement.

Interest under this subparagraph B shall be calculated as follows: If, for example, the Lessee elects to pay under this subparagraph B, and the Valley National Bank Home Office prime rate as of the effective date of this Lease is seven percent (7%), the second annual installment shall be in the principal amount of $9,000 plus interest in the amount of $5,040, for a total payment of $14,040. The third annual installment shall be in the principal amount of $9,000 plus interest in the amount of $4,320, for a total payment of $13,320.

. . .

Without any prepayment penalty, the Lessee may at any time elect to pay the balance in full together with interest on the unpaid balance to the date of such payment.

3.4 Operation, Maintenance and Replacement Costs. The Lessee shall pay the full amount of the water service charges for operation, maintenance and replacement costs for the Project Water to the United States or, if so directed by the Secretary, to the Central Arizona Water Conservation District ("CAWCD") in accordance with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract, except that the Lessee's obligation to pay operation, maintenance and replacement charges shall not begin earlier than October 1, 1998.

3.5 Other Charges or Payments. The Lessee shall not be obligated to pay water service capital charges or M&I subcontract charges or any other charges or payments for the Project Water other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of this Project Water Lease Agreement. The Lessee shall pay any charges or payments imposed against the Lessor with respect to the leased Project Water during the term of this Project Water Lease Agreement.

3.6 Delivery of Water. The United States or CAWCD shall deliver the Lessor's Project Water to the Lessee as further provided herein; however, neither the United States nor CAWCD shall be obligated to make such deliveries if, in the judgment of CAWCD or the Secretary, delivery or schedule of deliveries to the Lessee would limit deliveries of CAP water to other CAP subcontractors to

a degree greater than deliveries to the Lessor. The United States or CAWCD shall deliver water to the Lessee in accordance with water delivery schedules provided by the Lessee to the United States and CAWCD. The water ordering procedures contained in Article 4.4 of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee's ordering of water under this Project Water Lease Agreement. In no event shall the United States or CAWCD be required to deliver to the Lessee from the Water Supply System in any one month a total amount of Project Water greater than eleven percent (11%) of the Lessee's maximum entitlement under this Project Water Lease Agreement; provided, however, that the United States or CAWCD may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to all CAP subcontractors as determined by the United States and CAWCD if the Lessee agrees to accept such increased deliveries.

3.6.1 Sharing of Shortages. In the event of a shortage resulting in the Lessor's share of Project Water under the CAP Delivery Contract falling below 13,300 acre feet in any year, such shortage shall be shared pro rata among the Arizona Cities of Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the Arizona Town of Gilbert in accordance with the percentages set forth in Paragraph 19.6 of the SRPMIC Agreement.

3.7 Use of Project Water Outside Reservation. The Lessee may use or deliver Project Water for use outside the boundaries of the

. . .

reservation, but may not use or deliver Project Water for use outside of the boundaries of CAWCD.

3.8 Conditions Relating to Delivery and Use. Lessee shall have the right to use water received under this Project Water Lease Agreement for any purpose consistent with Arizona law, including ground water recharge as that term is defined in Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, as amended on December 1, 1988, hereinafter referred to as the "Repayment Contract." Deliveries of Project Water to the Lessee and its use by the Lessee shall be subject to the Conditions Relating to Delivery and Use in Article 4.3 of the Lessee's CAP M&I Water Service Subcontract. During the term of this Project Water Lease Agreement, the following subarticles or articles of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee and to the Lessee's use of water under this Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Lessee expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

3.9 Secretarial Control of Return Flow. Project Water used by the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be subject to the terms relating to the Secretary's

. . .

right to control return flow as provided in Article 4.8 of the Lessee's CAP M&I Water Service Subcontract.

3.10 Points of Delivery. The Project Water to be delivered to the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be delivered at turnouts to be constructed by the United States at such points on the Water Supply System as have been previously agreed upon by the Contracting Officer and the Lessee in accordance with the provisions of Article 4.5 of the Lessee's CAP M&I Water Service Subcontract.

3.11 Lessor's Covenants. The Lessor agrees:

(A) To observe and perform all obligations imposed on the Lessor under the CAP Delivery Contract which are not assumed by the Lessee so that the Lessee's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the Lessor's right to the delivery of Project Water under the CAP Delivery Contract which would impair the Lessee's rights and duties hereunder;

(C) Not to alter or modify the terms of the CAP Delivery Contract, except as provided herein, in such a way as to impair the Lessee's rights hereunder or exercise any option required or permitted by the CAP Delivery Contract so as to interfere with or change the rights and obligations of the Lessee hereunder; and

(D) Not to terminate or cancel the CAP Delivery Contract or transfer, convey or permit a transfer or conveyance of the

Contract so as to cause a termination of, interference with, or modification of the rights and obligations under the CAP Delivery Contract.

3.12 Lessee Assignment. The Lessee may not transfer, assign or sublease all or any part of its interest in Project Water outside the boundaries of its existing or future service area without the prior written consent of the Lessor and the Secretary; Provided, That the Lessee shall not transfer, assign, or sublease all or any part of its interest in Project Water hereunder for an amount in excess of that which the Lessee is obligated to pay under this Project Water Lease Agreement without the additional prior written approval of CAWCD and the Secretary. If Project Water under this Project Water Lease Agreement is transferred, assigned or subleased by the Lessee for an amount in excess of that which the Lessee paid for such water under this Project Water Lease Agreement, the excess amount shall be paid forthwith by the Lessee to the CAWCD for application against CAWCD's repayment obligation to the United States; Provided, however, That the Lessee shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs. The Lessee shall not transfer, assign or sublease all or any part of its interest in Project Water if such transfer, assignment or sublease will adversely affect the Lessor without the prior written approval of Lessor. Lessee shall provide to CAWCD and the United States copies of any agreement transferring, assigning or subleasing all or any portion of Lessee's entitlement under this

Project Water Lease Agreement. Approval is hereby granted by the Secretary and the Lessor to the Lessee for the transfer, assignment or sublease of all or any part of its interest in Project Water under this Project Water Lease Agreement to the Arizona Cities of Phoenix, Glendale, Mesa, Chandler and Tempe, and the Arizona Town of Gilbert, or to its successor(s) in interest within the boundaries of its existing or future service area. Such approval shall be effective only upon the agreement by such transferee, assignee, or sublessee to pay all applicable water service charges associated with the delivery of Project Water, and otherwise to abide by all terms and conditions of this Project Water Lease Agreement.

3.13 CAWCD Repayment. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of water pursuant to this Water Project Lease Agreement shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

4. GENERAL PROVISIONS

4.1 United States Consent to Lease. The United States hereby approves and consents to this Project Water Lease Agreement.

4.2 Effective Date. This Project Water Lease Agreement shall become effective on the enforceability date of the SRPMIC Agreement as set forth in Paragraph 21.6 thereof.

. . .

4.3 Effect of SRPMIC Agreement. On the enforceability date of the SRPMIC Agreement, this Project Water Lease Agreement shall be effective and enforceable between the Lessor and the Lessee notwithstanding the performance or non-performance of other provisions of the SRPMIC Agreement not related to this Project Water Lease Agreement. The provisions of the SRPMIC Agreement that are related to this Project Water Lease Agreement are set forth in Paragraph 19.0 of the SRPMIC Agreement.

4.4 Invalidity of Agreement. If the Lessee's entitlement to Project Water under this Project Water Lease Agreement is determined to be invalid by a final judgment entered over the objection of the Lessee with the result that the Lessor reacquires the right to receive the Project Water, then the Lessor shall refund to the Lessee that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term.

4.5 Curing for Lessee's Nonpayment. If the initial payment is not made on or before the date such payment is due, or if any successive lease payment is not made on the date such payment is due, the Lessee shall be in default and the Lessor shall give written notice of default to the defaulting Lessee. The Lessor shall also send a copy of the notice of default to each other party to the SRPMIC Agreement which has entered into a Project Water Lease Agreement for the lease of the Lessor's Project Water ("Other Cities"). Notice shall be given in the manner and to the city officers specified in Paragraph 21.17 of the SRPMIC Agreement. The

notice of default shall specifically describe the default and state the amount due by such Lessee ("Default Amount"). After notice of default, the rights of the Lessee, the Lessor and the Other Cities shall be as follows:

A. During the first thirty (30) days following the notice of default ("First Grace Period"), the defaulting Lessee shall have the exclusive right to cure any such default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. During the First Grace Period, the defaulting Lessee may cure only by tendering the Default Amount.

B. In the event that the defaulting Lessee has not cured within thirty (30) days following the notice of default, the Lessee, any of the Other Cities, and/or any combination thereof, may thereafter, but within sixty (60) days following the notice of default ("Second Grace Period"), cure the default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. Each curing city or town shall succeed to the interest of the defaulting Lessee to the extent of its contribution. A cure effected pursuant to this section shall constitute full performance of such payment obligation.

. . .

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of $72,000 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By _____
Bureau of Indian Affairs

By _____
Bureau of Reclamation

Attest: _____

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____
Name: Gerald Anton
Title: President

Attest: _____
City Clerk

CITY OF SCOTTSDALE, an Arizona municipal corporation

Attest: _____
City Attorney

By _____
Name: _____
Title: _____

///

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of $72,000 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By _____

Attest:

_____

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____
Name:
Title:

Attest:

Mark G. Mayo
City Clerk

CITY OF SCOTTSDALE, an Arizona municipal corporation

By Herbert R. Drinkwater
Name: Herbert R. Drinkwater
Title: Mayor

Attest:

Barbara K. Goldberg for
City Attorney

///

EXHIBIT "3.m.4"

City of Tempe - SRPMIC Project Water Lease Agreement

PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the City of Tempe, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 (the "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed a First

. . .

Amendment to the CAP Delivery Contract which authorizes the Lessor to make this Project Water Lease Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

3. LEASE OF PROJECT WATER

3.1 Subject of Lease. The Lessor leases to the Lessee the right to the delivery of 60 acre-feet per year of Project Water under the CAP Delivery Contract, subject to the terms and conditions of the CAP Delivery Contract except as modified herein.

3.2 Term of Lease. The term of this Project Water Lease Agreement shall commence on January 1, 2000, and end on December 30, 2098.

3.3 Lessee's Payment for Lease. The consideration for this Project Water Lease Agreement is the payment by the Lessee to the Lessor of the sum of $72,000, which amount is due and payable on the effective date of this Project Water Lease Agreement. In lieu of making payment in full upon the effective date of this Project Water Lease Agreement, the Lessee may elect to make payment in either of the following ways:

A. An initial down payment of $36,000 on the effective date of this Project Water Lease Agreement, with four (4) annual payments, payable on the next four (4) anniversary dates of the effective date of this Project Water Lease Agreement, of $9,000 each, together with interest on the unpaid balance at an annual rate determined as follows:

one percent (1%) over the net interest rate paid by the City of Phoenix on its Water Renewal Refunding Bonds, Series 1986, determined as of the effective date of this Project Water Lease Agreement. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent.

B. An initial payment of $9,000 on the effective date of this Project Water Lease Agreement, with seven (7) annual payments payable on the next seven (7) anniversary dates of the effective date of this Project Water Lease Agreement of $9,000 each, together with interest on the unpaid balance at an annual rate of one percent (1%) over the Valley National Bank Home Office prime rate determined as of the effective date of this Project Water Lease Agreement.

Interest under this subparagraph B shall be calculated as follows: If, for example, the Lessee elects to pay under this subparagraph B, and the Valley National Bank Home Office prime rate as of the effective date of this Lease is seven percent (7%), the second annual installment shall be in the principal amount of $9,000 plus interest in the amount of $5,040, for a total payment of $14,040. The third annual installment shall be in the principal amount of $9,000 plus interest in the amount of $4,320, for a total payment of $13,320.

. . .

Without any prepayment penalty, the Lessee may at any time elect to pay the balance in full together with interest on the unpaid balance to the date of such payment.

3.4 Operation, Maintenance and Replacement Costs. The Lessee shall pay the full amount of the water service charges for operation, maintenance and replacement costs for the Project Water to the United States or, if so directed by the Secretary, to the Central Arizona Water Conservation District ("CAWCD") in accordance with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract, except that the Lessee's obligation to pay operation, maintenance and replacement charges shall not begin earlier than October 1, 1998.

3.5 Other Charges or Payments. The Lessee shall not be obligated to pay water service capital charges or M&I subcontract charges or any other charges or payments for the Project Water other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of this Project Water Lease Agreement. The Lessee shall pay any charges or payments imposed against the Lessor with respect to the leased Project Water during the term of this Project Water Lease Agreement.

3.6 Delivery of Water. The United States or CAWCD shall deliver the Lessor's Project Water to the Lessee as further provided herein; however, neither the United States nor CAWCD shall be obligated to make such deliveries if, in the judgment of CAWCD or the Secretary, delivery or schedule of deliveries to the Lessee would limit deliveries of CAP water to other CAP subcontractors to

a degree greater than deliveries to the Lessor. The United States or CAWCD shall deliver water to the Lessee in accordance with water delivery schedules provided by the Lessee to the United States and CAWCD. The water ordering procedures contained in Article 4.4 of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee's ordering of water under this Project Water Lease Agreement. In no event shall the United States or CAWCD be required to deliver to the Lessee from the Water Supply System in any one month a total amount of Project Water greater than eleven percent (11%) of the Lessee's maximum entitlement under this Project Water Lease Agreement; provided, however, that the United States or CAWCD may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to all CAP subcontractors as determined by the United States and CAWCD if the Lessee agrees to accept such increased deliveries.

3.6.1 Sharing of Shortages. In the event of a shortage resulting in the Lessor's share of Project Water under the CAP Delivery Contract falling below 13,300 acre feet in any year, such shortage shall be shared pro rata among the Arizona Cities of Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the Arizona Town of Gilbert in accordance with the percentages set forth in Paragraph 19.6 of the SRPMIC Agreement.

3.7 Use of Project Water Outside Reservation. The Lessee may use or deliver Project Water for use outside the boundaries of the

. . .

reservation, but may not use or deliver Project Water for use outside of the boundaries of CAWCD.

3.8 Conditions Relating to Delivery and Use. Lessee shall have the right to use water received under this Project Water Lease Agreement for any purpose consistent with Arizona law, including ground water recharge as that term is defined in Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, as amended on December 1, 1988, hereinafter referred to as the "Repayment Contract." Deliveries of Project Water to the Lessee and its use by the Lessee shall be subject to the Conditions Relating to Delivery and Use in Article 4.3 of the Lessee's CAP M&I Water Service Subcontract. During the term of this Project Water Lease Agreement, the following subarticles or articles of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee and to the Lessee's use of water under this Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Lessee expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

3.9 Secretarial Control of Return Flow. Project Water used by the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be subject to the terms relating to the

. . .

Secretary's right to control return flow as provided in Article 4.8 of the Lessee's CAP M&I Water Service Subcontract.

3.10 Points of Delivery. The Project Water to be delivered to the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be delivered at turnouts to be constructed by the United States at such points on the Water Supply System as have been previously agreed upon by the Contracting Officer and the Lessee in accordance with the provisions of Article 4.5 of the Lessee's CAP M&I Water Service Subcontract.

3.11 Lessor's Covenants. The Lessor agrees:

A. To observe and perform all obligations imposed on the Lessor under the CAP Delivery Contract which are not assumed by the Lessee so that the Lessee's rights and duties are not in any way impaired;

B. Not to execute any other lease of the Lessor's right to the delivery of Project Water under the CAP Delivery Contract which would impair the Lessee's rights and duties hereunder;

C. Not to alter or modify the terms of the CAP Delivery Contract, except as provided herein, in such a way as to impair the Lessee's rights hereunder or exercise any option required or permitted by the CAP Delivery Contract so as to interfere with or change the rights and obligations of the Lessee hereunder; and

D. Not to terminate or cancel the CAP Delivery Contract or transfer, convey or permit a transfer or conveyance of

the Contract so as to cause a termination of, interference with, or modification of the rights and obligations under the CAP Delivery Contract.

3.12 Lessee Assignment. The Lessee may not transfer, assign or sublease all or any part of its interest in Project Water outside the boundaries of its existing or future service area without the prior written consent of the Lessor and the Secretary; Provided, That the Lessee shall not transfer, assign, or sublease all or any part of its interest in Project Water hereunder for an amount in excess of that which the Lessee is obligated to pay under this Project Water Lease Agreement without the additional prior written approval of CAWCD and the Secretary. If Project Water under this Project Water Lease Agreement is transferred, assigned or subleased by the Lessee for an amount in excess of that which the Lessee paid for such water under this Project Water Lease Agreement, the excess amount shall be paid forthwith by the Lessee to the CAWCD for application against CAWCD's repayment obligation to the United States; Provided, however, That the Lessee shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs. The Lessee shall not transfer, assign or sublease all or any part of its interest in Project Water if such transfer, assignment or sublease will adversely affect the Lessor without the prior written approval of Lessor. Lessee shall provide to CAWCD and the United States copies of any agreement transferring, assigning or subleasing all or any portion of Lessee's entitlement

under this Project Water Lease Agreement. Approval is hereby granted by the Secretary and the Lessor to the Lessee for the transfer, assignment or sublease of all or any part of its interest in Project Water under this Project Water Lease Agreement to the Arizona Cities of Phoenix, Glendale, Mesa, Scottsdale and Chandler, and the Arizona Town of Gilbert, or to its successor(s) in interest within the boundaries of its existing or future service area. Such approval shall be effective only upon the agreement by such transferee, assignee, or sublessee to pay all applicable water service charges associated with the delivery of Project Water, and otherwise to abide by all terms and conditions of this Project Water Lease Agreement.

3.13 CAWCD Repayment. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of water pursuant to this Water Project Lease Agreement shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

4. GENERAL PROVISIONS

4.1 United States Consent to Lease. The United States hereby approves and consents to this Project Water Lease Agreement.

4.2 Effective Date. This Project Water Lease Agreement shall become effective on the enforceability date of the SRPMIC Agreement as set forth in Paragraph 21.6 thereof.

. . .

4.3 Effect of SRPMIC Agreement. On the enforceability date of the SRPMIC Agreement, this Project Water Lease Agreement shall be effective and enforceable between the Lessor and the Lessee notwithstanding the performance or non-performance of other provisions of the SRPMIC Agreement not related to this Project Water Lease Agreement. The provisions of the SRPMIC Agreement that are related to this Project Water Lease Agreement are set forth in Paragraph 19.0 of the SRPMIC Agreement.

4.4 Invalidity of Agreement. If the Lessee's entitlement to Project Water under this Project Water Lease Agreement is determined to be invalid by a final judgment entered over the objection of the Lessee with the result that the Lessor reacquires the right to receive the Project Water, then the Lessor shall refund to the Lessee that portion of the lease payment that the number in the years remaining in the lease term at the time of such determination bears to the total lease term.

4.5 Curing for Lessee's Nonpayment. If the initial payment is not made on or before the date such payment is due, or if any successive lease payment is not made on the date such payment is due, the Lessee shall be in default and the Lessor shall give written notice of default to the defaulting Lessee. The Lessor shall also send a copy of the notice of default to each other party to the SRPMIC Agreement which has entered into a Project Water Lease Agreement for the lease of the Lessor's Project Water ("Other Cities"). Notice shall be given in the manner and to the city

officers specified in Paragraph 21.17 of the SRPMIC Agreement. The notice of default shall specifically describe the default and state the amount due by such Lessee ("Default Amount"). After notice of default, the rights of the Lessee, the Lessor and the Other Cities shall be as follows:

A. During the first thirty (30) days following the notice of default ("First Grace Period"), the defaulting Lessee shall have the exclusive right to cure any such default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. During the First Grace Period, the defaulting Lessee may cure only by tendering the Default Amount.

B. In the event that the defaulting Lessee has not cured within thirty (30) days following the notice of default, the Lessee, any of the Other Cities, and/or any combination thereof, may thereafter, but within sixty (60) days following the notice of default ("Second Grace Period"), cure the default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. Each curing city or town shall succeed to the interest of the defaulting Lessee to the extent of its contribution. A cure effected pursuant to this section shall constitute full performance of such payment obligation.

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of $72,000 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By _____
Bureau of Indian Affairs

By _____
Bureau of Reclamation

Attest: _____

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____
Name: Gerald Anton
Title: President

Attest: _____
City Clerk

CITY OF TEMPE, an Arizona municipal corporation

Attest: _____
City Attorney

By _____
Name: _____
Title: _____

. . .

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of $72,000 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By _____

Attest:

_____

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____
Name: _____
Title: _____

Attest:

Helen R. Bowler
City Clerk

CITY OF TEMPE, an Arizona municipal corporation

~~Attest~~: Approved as to form:

C. Brad Wanford
City Attorney

By Harry E. Mitchell
Name: Harry E. Mitchell
Title: Mayor

. . .

EXHIBIT "3.m.5"

City of Mesa - SRPMIC Project Water Lease Agreement

PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the City of Mesa, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 (the "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed a First

. . .

Amendment to the CAP Delivery Contract which authorizes the Lessor to make this Project Water Lease Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

3. LEASE OF PROJECT WATER

3.1 Subject of Lease. The Lessor leases to the Lessee the right to the delivery of 1,669 acre-feet per year of Project Water under the CAP Delivery Contract, subject to the terms and conditions of the CAP Delivery Contract except as modified herein.

3.2 Term of Lease. The term of this Project Water Lease Agreement shall commence on January 1, 2000, and end on December 30, 2098.

3.3 Lessee's Payment for Lease. The consideration for this Project Water Lease Agreement is the payment by the Lessee to the Lessor of the sum of $2,008,000, which amount is due and payable on the effective date of this Project Water Lease Agreement. In lieu of making payment in full upon the effective date of this Project Water Lease Agreement, the Lessee may elect to make payment in either of the following ways:

A. An initial down payment of $1,004,000 on the effective date of this Project Water Lease Agreement, with four (4) annual payments, payable on the next four (4) anniversary dates of the effective date of this Project Water Lease Agreement, of $251,000 each, together with interest on the unpaid balance at an annual rate determined as

follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its Water Renewal Refunding Bonds, Series 1986, determined as of the effective date of this Project Water Lease Agreement. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent.

B. An initial payment of $251,000 on the effective date of this Project Water Lease Agreement, with seven (7) annual payments payable on the next seven (7) anniversary dates of the effective date of this Project Water Lease Agreement of $251,000 each, together with interest on the unpaid balance at an annual rate of one percent (1%) over the Valley National Bank Home Office prime rate determined as of the effective date of this Project Water Lease Agreement.

Interest under this subparagraph B shall be calculated as follows: If, for example, the Lessee elects to pay under this subparagraph B, and the Valley National Bank Home Office prime rate as of the effective date of this Lease is seven percent (7%), the second annual installment shall be in the principal amount of $251,000 plus interest in the amount of $140,560, for a total payment of $391,560. The third annual installment shall be in the principal amount of $251,000 plus interest in the amount of $120,480, for a total payment of $371,480.

Without any prepayment penalty, the Lessee may at any time elect to pay the balance in full together with interest on the unpaid balance to the date of such payment.

3.4 Operation, Maintenance and Replacement Costs. The Lessee shall pay the full amount of the water service charges for operation, maintenance and replacement costs for the Project Water to the United States or, if so directed by the Secretary, to the Central Arizona Water Conservation District ("CAWCD") in accordance with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract, except that the Lessee's obligation to pay operation, maintenance and replacement charges shall not begin earlier than October 1, 1998.

3.5 Other Charges or Payments. The Lessee shall not be obligated to pay water service capital charges or M&I subcontract charges or any other charges or payments for the Project Water other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of this Project Water Lease Agreement. The Lessee shall pay any charges or payments imposed against the Lessor with respect to the leased Project Water during the term of this Project Water Lease Agreement.

3.6 Delivery of Water. The United States or CAWCD shall deliver the Lessor's Project Water to the Lessee as further provided herein; however, neither the United States nor CAWCD shall be obligated to make such deliveries if, in the judgment of CAWCD or the Secretary, delivery or schedule of deliveries to the Lessee would limit deliveries of CAP water to other CAP subcontractors to

a degree greater than deliveries to the Lessor. The United States or CAWCD shall deliver water to the Lessee in accordance with water delivery schedules provided by the Lessee to the United States and CAWCD. The water ordering procedures contained in Article 4.4 of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee's ordering of water under this Project Water Lease Agreement. In no event shall the United States or CAWCD be required to deliver to the Lessee from the Water Supply System in any one month a total amount of Project Water greater than eleven percent (11%) of the Lessee's maximum entitlement under this Project Water Lease Agreement; provided, however, that the United States or CAWCD may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to all CAP subcontractors as determined by the United States and CAWCD if the Lessee agrees to accept such increased deliveries.

3.6.1 Sharing the Shortages. In the event of a shortage resulting in the Lessor's share of Project Water under the CAP Delivery Contract falling below 13,300 acre feet in any year, such shortage shall be shared pro rata among the Arizona Cities of Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the Arizona Town of Gilbert in accordance with the percentages set forth in Paragraph 19.6 of the SRPMIC Agreement.

3.7 Use of Project Water Outside Reservation. The Lessee may use or deliver Project Water for use outside the boundaries of the

. . .

reservation, but may not use or deliver Project Water for use outside of the boundaries of CAWCD.

3.8 Conditions Relating to Delivery and Use. Lessee shall have the right to use water received under this Project Water Lease Agreement for any purpose consistent with Arizona law, including ground water recharge as that term is defined in Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, as amended on December 1, 1988, hereinafter referred to as the "Repayment Contract." Deliveries of Project Water to the Lessee and its use by the Lessee shall be subject to the Conditions Relating to Delivery and Use in Article 4.3 of the Lessee's CAP M&I Water Service Subcontract. During the term of this Project Water Lease Agreement, the following subarticles or articles of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee and to the Lessee's use of water under this Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Lessee expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

3.9 Secretarial Control of Return Flow. Project Water used by the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be subject to the terms relating to the

. . .

Secretary's right to control return flow as provided in Article 4.8 of the Lessee's CAP M&I Water Service Subcontract.

3.10 Points of Delivery. The Project Water to be delivered to the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be delivered at turnouts to be constructed by the United States at such points on the Water Supply System as have been previously agreed upon by the Contracting Officer and the Lessee in accordance with the provisions of Article 4.5 of the Lessee's CAP M&I Water Service Subcontract.

3.11 Lessor's Covenants. The Lessor agrees:

(A) To observe and perform all obligations imposed on the Lessor under the CAP Delivery Contract which are not assumed by the Lessee so that the Lessee's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the Lessor's right to the delivery of Project Water under the CAP Delivery Contract which would impair the Lessee's rights and duties hereunder;

(C) Not to alter or modify the terms of the CAP Delivery Contract, except as provided herein, in such a way as to impair the Lessee's rights hereunder or exercise any option required or permitted by the CAP Delivery Contract so as to interfere with or change the rights and obligations of the Lessee hereunder; and

(D) Not to terminate or cancel the CAP Delivery Contract or transfer, convey or permit a transfer or conveyance of the

Contract so as to cause a termination of, interference with, or modification of the rights and obligations under the CAP Delivery Contract.

3.12 Lessee Assignment. The Lessee may not transfer, assign or sublease all or any part of its interest in Project Water outside the boundaries of its existing or future service area without the prior written consent of the Lessor and the Secretary; Provided, That the Lessee shall not transfer, assign, or sublease all or any part of its interest in Project Water hereunder for an amount in excess of that which the Lessee is obligated to pay under this Project Water Lease Agreement without the prior written approval of CAWCD and the Secretary. If Project Water under this Project Water Lease Agreement is transferred, assigned or subleased by the Lessee for an amount in excess of that which the Lessee paid for such water under this Project Water Lease Agreement, the excess amount shall be paid forthwith by the Lessee to the CAWCD for application against CAWCD's repayment obligation to the United States; Provided, however, That the Lessee shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs. The Lessee shall not transfer, assign or sublease all or any part of its interest in Project Water if such transfer, assignment or sublease will adversely affect the Lessor without the prior written approval of Lessor. Lessee shall provide to CAWCD and the United States copies of any agreement transferring, assigning or subleasing all or any portion of Lessee's entitlement

under this Project Water Lease Agreement. Approval is hereby granted by the Secretary and the Lessor to the Lessee for the transfer, assignment or sublease of all or any part of its interest in Project Water under this Project Water Lease Agreement to the Arizona Cities of Phoenix, Glendale, Chandler, Scottsdale and Tempe, and the Arizona Town of Gilbert, or to its successor(s) in interest within the boundaries of its existing or future service area. Such approval shall be effective only upon the agreement by such transferee, assignee, or sublessee to pay all applicable water service charges associated with the delivery of Project Water, and otherwise to abide by all terms and conditions of this Project Water Lease Agreement.

3.13 CAWCD Repayment. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of water pursuant to this Water Project Lease Agreement shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

4. GENERAL PROVISIONS

4.1 United States Consent to Lease. The United States hereby approves and consents to this Project Water Lease Agreement.

4.2 Effective Date. This Project Water Lease Agreement shall become effective on the enforceability date of the SRPMIC Agreement as set forth in Paragraph 21.6 thereof.

. . .

4.3 Effect of SRPMIC Agreement. On the enforceability date of the SRPMIC Agreement, this Project Water Lease Agreement shall be effective and enforceable between the Lessor and the Lessee notwithstanding the performance or non-performance of other provisions of the SRPMIC Agreement not related to this Project Water Lease Agreement. The provisions of the SRPMIC Agreement that are related to this Project Water Lease Agreement are set forth in Paragraph 19.0 of the SRPMIC Agreement.

4.4 Invalidity of Agreement. If the Lessee's entitlement to Project Water under this Project Water Lease Agreement is determined to be invalid by a final judgment entered over the objection of the Lessee with the result that the Lessor reacquires the right to receive the Project Water, then the Lessor shall refund to the Lessee that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term.

4.5 Curing for Lessee's Nonpayment. If the initial payment is not made on or before the date such payment is due, or if any successive lease payment is not made on the date such payment is due, the Lessee shall be in default and the Lessor shall give written notice of default to the defaulting Lessee. The Lessor shall also send a copy of the notice of default to each other party to the SRPMIC Agreement which has entered into a Project Water Lease Agreement for the lease of the Lessor's Project Water ("Other Cities"). Notice shall be given in the manner and to the city officers specified in Paragraph 21.17 of the SRPMIC Agreement. The

notice of default shall specifically describe the default and state the amount due by such Lessee ("Default Amount"). After notice of default, the rights of the Lessee, the Lessor and the Other Cities shall be as follows:

A. During the first thirty (30) days following the notice of default ("First Grace Period"), the defaulting Lessee shall have the exclusive right to cure any such default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. During the First Grace Period, the defaulting Lessee may cure only by tendering the Default Amount.

B. In the event that the defaulting Lessee has not cured within thirty (30) days following the notice of default, the Lessee, any of the Other Cities, and/or any combination thereof, may thereafter, but within sixty (60) days following the notice of default ("Second Grace Period"), cure the default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. Each curing city or town shall succeed to the interest of the defaulting Lessee to the extent of its contribution. A cure effected pursuant to this section shall constitute full performance of such payment obligation.

. . .

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of $2,008,000 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By _____
Bureau of Indian Affairs

By _____
Bureau of Reclamation

Attest: _____

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____
Name: Gerald Anton
Title: President

Attest: _____
City Clerk

CITY OF MESA, an Arizona municipal corporation

Attest: _____

By _____
Name: _____
Title: _____

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of $2,008,000 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By _____

Attest:

_____

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____
Name:
Title:

Attest:

_____
City Attorney

CITY OF MESA, an Arizona municipal corporation

Attest:

_____
City Clerk

By _____
Name: C. K. Luster
Title: City Manager

EXHIBIT "3.m.6"

City of Phoenix - SRPMIC Project Water Lease Agreement

PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the City of Phoenix, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 (the "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed a First

. . .

Amendment to the CAP Delivery Contract which authorizes the Lessor to make this Project Water Lease Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

3. LEASE OF PROJECT WATER

3.1 Subject of Lease. The Lessor leases to the Lessee the right to the delivery of 3,023 acre-feet per year of Project Water under the CAP Delivery Contract, subject to the terms and conditions of the CAP Delivery Contract except as modified herein.

3.2 Term of Lease. The term of this Project Water Lease Agreement shall commence on January 1, 2000, and end on December 30, 2098.

3.3 Lessee's Payment for Lease. The consideration for this Project Water Lease Agreement is the payment by the Lessee to the Lessor of the sum of $3,636,800, which amount is due and payable on the effective date of this Project Water Lease Agreement. In lieu of making payment in full upon the effective date of this Project Water Lease Agreement, the Lessee may elect to make payment in either of the following ways:

A. An initial down payment of $1,818,400 on the effective date of this Project Water Lease Agreement, with four (4) annual payments, payable on the next four (4) anniversary dates of the effective date of this Project Water Lease Agreement, of $454,600 each, together with interest on the unpaid balance at an annual rate determined as

follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its Water Renewal Refunding Bonds, Series 1986, determined as of the effective date of this Project Water Lease Agreement. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent.

B. An initial payment of $454,600 on the effective date of this Project Water Lease Agreement, with seven (7) annual payments payable on the next seven (7) anniversary dates of the effective date of this Project Water Lease Agreement of $454,600 each, together with interest on the unpaid balance at an annual rate of one percent (1%) over the Valley National Bank Home Office prime rate determined as of the effective date of this Project Water Lease Agreement.

Interest under this subparagraph B shall be calculated as follows: If, for example, the Lessee elects to pay under this subparagraph B, and the Valley National Bank Home Office prime rate as of the effective date of this Lease is seven percent (7%), the second annual installment shall be in the principal amount of $454,600 plus interest in the amount of $254,576, for a total payment of $709,176. The third annual installment shall be in the principal amount of $454,600 plus interest in the amount of $218,208, for a total payment of $672,808.

Without any prepayment penalty, the Lessee may at any time elect to pay the balance in full together with interest on the unpaid balance to the date of such payment.

3.4 Operation, Maintenance and Replacement Costs. The Lessee shall pay the full amount of the water service charges for operation, maintenance and replacement costs for the Project Water to the United States or, if so directed by the Secretary, to the Central Arizona Water Conservation District ("CAWCD") in accordance with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract, except that the Lessee's obligation to pay operation, maintenance and replacement charges shall not begin earlier than October 1, 1998.

3.5 Other Charges or Payments. The Lessee shall not be obligated to pay water service capital charges or M&I subcontract charges or any other charges or payments for the Project Water other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of this Project Water Lease Agreement. The Lessee shall pay any charges or payments imposed against the Lessor with respect to the leased Project Water during the term of this Project Water Lease Agreement.

3.6 Delivery of Water. The United States or CAWCD shall deliver the Lessor's Project Water to the Lessee as further provided herein; however, neither the United States nor CAWCD shall be obligated to make such deliveries if, in the judgment of CAWCD or the Secretary, delivery or schedule of deliveries to the Lessee would limit deliveries of CAP water to other CAP subcontractors to

a degree greater than deliveries to the Lessor. The United States or CAWCD shall deliver water to the Lessee in accordance with water delivery schedules provided by the Lessee to the United States and CAWCD. The water ordering procedures contained in Article 4.4 of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee's ordering of water under this Project Water Lease Agreement. In no event shall the United States or CAWCD be required to deliver to the Lessee from the Water Supply System in any one month a total amount of Project Water greater than eleven percent (11%) of the Lessee's maximum entitlement under this Project Water Lease Agreement; provided, however, that the United States or CAWCD may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to all CAP subcontractors as determined by the United States and CAWCD if the Lessee agrees to accept such increased deliveries.

3.6.1 Sharing of Shortages. In the event of a shortage resulting in the Lessor's share of Project Water under the CAP Delivery Contract falling below 13,300 acre feet in any year, such shortage shall be shared pro rata among the Arizona Cities of Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the Arizona Town of Gilbert in accordance with the percentages set forth in Paragraph 19.6 of the SRPMIC Agreement.

3.7 Use of Project Water Outside Reservation. The Lessee may use or deliver Project Water for use outside the boundaries of the

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reservation, but may not use or deliver Project Water for use outside of the boundaries of CAWCD.

3.8 Conditions Relating to Delivery and Use. Lessee shall have the right to use water received under this Project Water Lease Agreement for any purpose consistent with Arizona law, including ground water recharge as that term is defined in Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, as amended on December 1, 1988, hereinafter referred to as the "Repayment Contract." Deliveries of Project Water to the Lessee and its use by the Lessee shall be subject to the Conditions Relating to Delivery and Use in Article 4.3 of the Lessee's CAP M&I Water Service Subcontract. During the term of this Project Water Lease Agreement, the following subarticles or articles of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee and to the Lessee's use of water under this Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Lessee expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

3.9 Secretarial Control of Return Flow. Project Water used by the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be subject to the terms relating to the Secretary's

. . .

right to control return flow as provided in Article 4.8 of the Lessee's CAP M&I Water Service Subcontract.

3.10 Points of Delivery. The Project Water to be delivered to the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be delivered at turnouts to be constructed by the United States at such points on the Water Supply System as have been previously agreed upon by the Contracting Officer and the Lessee in accordance with the provisions of Article 4.5 of the Lessee's CAP M&I Water Service Subcontract.

3.11 Lessor's Covenants. The Lessor agrees:

(A) To observe and perform all obligations imposed on the Lessor under the CAP Delivery Contract which are not assumed by the Lessee so that the Lessee's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the Lessor's right to the delivery of Project Water under the CAP Delivery Contract which would impair the Lessee's rights and duties hereunder;

(C) Not to alter or modify the terms of the CAP Delivery Contract, except as provided herein, in such a way as to impair the Lessee's rights hereunder or exercise any option required or permitted by the CAP Delivery Contract so as to interfere with or change the rights and obligations of the Lessee hereunder; and

(D) Not to terminate or cancel the CAP Delivery Contract or transfer, convey or permit a transfer or conveyance of the

Contract so as to cause a termination of, interference with, or modification of the rights and obligations under the CAP Delivery Contract.

3.12 Lessee Assignment. The Lessee may not transfer, assign or sublease all or any part of its interest in Project Water outside the boundaries of its existing or future service area without the prior written consent of the Lessor and the Secretary; Provided, That the Lessee shall not transfer, assign, or sublease all or any part of its interest in Project Water hereunder for an amount in excess of that which the Lessee is obligated to pay under this Project Water Lease Agreement without the additional prior written approval of CAWCD and the Secretary. If Project Water under this Project Water Lease Agreement is transferred, assigned or subleased by the Lessee for an amount in excess of that which the Lessee paid for such water under this Project Water Lease Agreement, the excess amount shall be paid forthwith by the Lessee to the CAWCD for application against CAWCD's repayment obligation to the United States; Provided, however, That the Lessee shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs. The Lessee shall not transfer, assign or sublease all or any part of its interest in Project Water if such transfer, assignment or sublease will adversely affect the Lessor without the prior written approval of Lessor. Lessee shall provide to CAWCD and the United States copies of any agreement transferring, assigning or subleasing all or any portion of Lessee's entitlement

under this Project Water Lease Agreement. Approval is hereby granted by the Secretary and the Lessor to the Lessee for the transfer, assignment or sublease of all or any part of its interest in Project Water under this Project Water Lease Agreement to the Arizona Cities of Chandler, Glendale, Mesa, Scottsdale and Tempe, and the Arizona Town of Gilbert, or to its successor(s) in interest within the boundaries of its existing or future service area. Such approval shall be effective only upon the agreement by such transferee, assignee, or sublessee to pay all applicable water service charges associated with the delivery of Project Water, and otherwise to abide by all terms and conditions of this Project Water Lease Agreement.

3.13 CAWCD Repayment. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of water pursuant to this Water Project Lease Agreement shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

4. GENERAL PROVISIONS

4.1 United States Consent to Lease. The United States hereby approves and consents to this Project Water Lease Agreement.

4.2 Effective Date. This Project Water Lease Agreement shall become effective on the enforceability date of the SRPMIC Agreement as set forth in Paragraph 21.6 thereof.

. . .

4.3 Effect of SRPMIC Agreement. On the enforceability date of the SRPMIC Agreement, this Project Water Lease Agreement shall be effective and enforceable between the Lessor and the Lessee notwithstanding the performance or non-performance of other provisions of the SRPMIC Agreement not related to this Project Water Lease Agreement. The provisions of the SRPMIC Agreement that are related to this Project Water Lease Agreement are set forth in Paragraph 19.0 of the SRPMIC Agreement.

4.4 Invalidity of Agreement. If the Lessee's entitlement to Project Water under this Project Water Lease Agreement is determined to be invalid by a final judgment entered over the objection of the Lessee with the result that the Lessor reacquires the right to receive the Project Water, then the Lessor shall refund to the Lessee that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term.

4.5 Curing for Lessee's Nonpayment. If the initial payment is not made on or before the date such payment is due, or if any successive lease payment is not made on the date such payment is due, the Lessee shall be in default and the Lessor shall give written notice of default to the defaulting Lessee. The Lessor shall also send a copy of the notice of default to each other party to the SRPMIC Agreement which has entered into a Project Water Lease Agreement for the lease of the Lessor's Project Water ("Other Cities"). Notice shall be given in the manner and to the city officers specified in Paragraph 21.17 of the SRPMIC Agreement. The

notice of default shall specifically describe the default and state the amount due by such Lessee ("Default Amount"). After notice of default, the rights of the Lessee, the Lessor and the Other Cities shall be as follows:

A. During the first thirty (30) days following the notice of default ("First Grace Period"), the defaulting Lessee shall have the exclusive right to cure any such default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. During the First Grace Period, the defaulting Lessee may cure only by tendering the Default Amount.

B. In the event that the defaulting Lessee has not cured within thirty (30) days following the notice of default, the Lessee, any of the Other Cities, and/or any combination thereof, may thereafter, but within sixty (60) days following the notice of default ("Second Grace Period"), cure the default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. Each curing city or town shall succeed to the interest of the defaulting Lessee to the extent of its contribution. A cure effected pursuant to this section shall constitute full performance of such payment obligation.

. . .

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of $3,636,800 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By _____
Bureau of Indian Affairs

Attest:

_____

By _____
Bureau of Reclamation

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____
Name: Gerald Anton
Title: President

Attest:

_____
City Clerk

CITY OF PHOENIX, MARVIN A. ANDREWS, City Manager

By: _____

Attest:

_____
City Attorney

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the amount of $3,636,800 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By _____

Attest:

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

_____

By _____
Name: _____
Title: _____

Attest:

CITY OF PHOENIX, a Municipal corporation, MARVIN A. ANDREWS, City Manager

Vicky Mick
City Clerk

By: _____

Approved as to Form:

City Attorney

EXHIBIT "3.m.7"

Town of Gilbert - SRPMIC Project Water Lease Agreement

PROJECT WATER LEASE AGREEMENT

1. PREAMBLE

This Project Water Lease Agreement, made as of the 12th day of February, 1988, is between the United States of America (hereinafter "United States"), the Salt River Pima-Maricopa Indian Community (hereinafter "Lessor") and the Town of Gilbert, Arizona (hereinafter "Lessee"), witnesseth that:

2. EXPLANATORY RECITALS

WHEREAS, the parties to this Project Water Lease Agreement are also parties to the Salt River Pima-Maricopa Indian Community Water Settlement Agreement dated as of February 12, 1988 (the "SRPMIC Agreement");

WHEREAS, Paragraph 19.0 of the SRPMIC Agreement obligates the United States, the Lessor and the Lessee to enter into an agreement for the lease by the Lessor to the Lessee of Project Water to which the Lessor is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the "CAP Delivery Contract"); and

WHEREAS, by the Act of October 20, 1988, 102 Stat. 2549 (the "Authorizing Legislation"), the United States confirmed the SRPMIC Agreement and specifically authorized the amendment of the CAP Delivery Contract and the lease of the Lessor's rights to Project Water to the Lessee; and

WHEREAS, pursuant to the SRPMIC Agreement and the Authorizing Legislation, the United States and the Lessor have executed a First

. . .

Amendment to the CAP Delivery Contract which authorizes the Lessor to make this Project Water Lease Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

3. LEASE OF PROJECT WATER

3.1 Subject of Lease. The Lessor leases to the Lessee the right to the delivery of 4,088 acre-feet per year of Project Water under the CAP Delivery Contract, subject to the terms and conditions of the CAP Delivery Contract except as modified herein.

3.2 Term of Lease. The term of this Project Water Lease Agreement shall commence on January 1, 2000, and end on December 30, 2098.

3.3 Lessee's Payment for Lease. The consideration for this Project Water Lease Agreement is the payment by the Lessee to the Lessor of the sum of $4,916,800, which amount is due and payable on the effective date of this Project Water Lease Agreement. In lieu of making payment in full upon the effective date of this Project Water Lease Agreement, the Lessee may elect to make payment in either of the following ways:

A. An initial down payment of $2,458,400 on the effective date of this Project Water Lease Agreement, with four (4) annual payments, payable on the next four (4) anniversary dates of the effective date of this Project Water Lease Agreement, of $614,600 each, together with interest on the unpaid balance at an annual rate determined as

follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its Water Renewal Refunding Bonds, Series 1986, determined as of the effective date of this Project Water Lease Agreement. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent.

B. An initial payment of $614,600 on the effective date of this Project Water Lease Agreement, with seven (7) annual payments payable on the next seven (7) anniversary dates of the effective date of this Project Water Lease Agreement of $614,600 each, together with interest on the unpaid balance at an annual rate of one percent (1%) over the Valley National Bank Home Office prime rate determined as of the effective date of this Project Water Lease Agreement.

Interest under this subparagraph B shall be calculated as follows: If, for example, the Lessee elects to pay under this subparagraph B, and the Valley National Bank Home Office prime rate as of the effective date of this Lease is seven percent (7%), the second annual installment shall be in the principal amount of $614,600 plus interest in the amount of $344,716, for a total payment of $958,776. The third annual installment shall be in the principal amount of $614,600 plus interest in the amount of $295,008, for a total payment of $909,608.

Without any prepayment penalty, the Lessee may at any time elect to pay the balance in full together with interest on the unpaid balance to the date of such payment.

3.4 Operation, Maintenance and Replacement Costs. The Lessee shall pay the full amount of the water service charges for operation, maintenance and replacement costs for the Project Water to the United States or, if so directed by the Secretary, to the Central Arizona Water Conservation District ("CAWCD") in accordance with Article 5.1 of the Lessee's CAP M&I Water Service Subcontract, except that the Lessee's obligation to pay operation, maintenance and replacement charges shall not begin earlier than October 1, 1998.

3.5 Other Charges or Payments. The Lessee shall not be obligated to pay water service capital charges or M&I subcontract charges or any other charges or payments for the Project Water other than as provided in Subparagraphs 3.3, 3.4, 3.5 and 3.12 of this Project Water Lease Agreement. The Lessee shall pay any charges or payments imposed against the Lessor with respect to the leased Project Water during the term of this Project Water Lease Agreement.

3.6 Delivery of Water. The United States or CAWCD shall deliver the Lessor's Project Water to the Lessee as further provided herein; however, neither the United States nor CAWCD shall be obligated to make such deliveries if, in the judgment of CAWCD or the Secretary, delivery or schedule of deliveries to the Lessee would limit deliveries of CAP water to other CAP subcontractors to

a degree greater than deliveries to the Lessor. The United States or CAWCD shall deliver water to the Lessee in accordance with water delivery schedules provided by the Lessee to the United States and CAWCD. The water ordering procedures contained in Article 4.4 of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee's ordering of water under this Project Water Lease Agreement. In no event shall the United States or CAWCD be required to deliver to the Lessee from the Water Supply System in any one month a total amount of Project Water greater than eleven percent (11%) of the Lessee's maximum entitlement under this Project Water Lease Agreement; provided, however, that the United States or CAWCD may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to all CAP subcontractors as determined by the United States and CAWCD if the Lessee agrees to accept such increased deliveries.

3.6.1 Sharing of Shortages. In the event of a shortage resulting in the Lessor's share of Project Water under the CAP Delivery Contract falling below 13,300 acre feet in any year, such shortage shall be shared pro rata among the Arizona Cities of Glendale, Phoenix, Chandler, Mesa, Scottsdale, and Tempe and the Arizona Town of Gilbert in accordance with the percentages set forth in Paragraph 19.6 of the SRPMIC Agreement.

3.7 Use of Project Water Outside Reservation. The Lessee may use or deliver Project Water for use outside the boundaries of the

. . .

reservation, but may not use or deliver Project Water for use outside of the boundaries of CAWCD.

3.8 Conditions Relating to Delivery and Use. Lessee shall have the right to use water received under this Project Water Lease Agreement for any purpose consistent with Arizona law, including ground water recharge as that term is defined in Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, as amended on December 1, 1988, hereinafter referred to as the "Repayment Contract." Deliveries of Project Water to the Lessee and its use by the Lessee shall be subject to the Conditions Relating to Delivery and Use in Article 4.3 of the Lessee's CAP M&I Water Service Subcontract. During the term of this Project Water Lease Agreement, the following subarticles or articles of the Lessee's CAP M&I Water Service Subcontract shall apply to the Lessee and to the Lessee's use of water under this Project Water Lease Agreement: Subarticles 4.5(c), 4.5(d), and 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Lessee expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

3.9 Secretarial Control of Return Flow. Project Water used by the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be subject to the terms relating to the

. . .

Secretary's right to control return flow as provided in Article 4.8 of the Lessee's CAP M&I Water Service Subcontract.

3.10 Points of Delivery. The Project Water to be delivered to the Lessee pursuant to the provisions of this Project Water Lease Agreement shall be delivered at turnouts to be constructed by the United States at such points on the Water Supply System as have been previously agreed upon by the Contracting Officer and the Lessee in accordance with the provisions of Article 4.5 of the Lessee's CAP M&I Water Service Subcontract.

3.11 Lessor's Covenants. The Lessor agrees:

A. To observe and perform all obligations imposed on the Lessor under the CAP Delivery Contract which are not assumed by the Lessee so that the Lessee's rights and duties are not in any way impaired;

B. Not to execute any other lease of the Lessor's right to the delivery of Project Water under the CAP Delivery Contract which would impair the Lessee's rights and duties hereunder;

C. Not to alter or modify the terms of the CAP Delivery Contract, except as provided herein, in such a way as to impair the Lessee's rights hereunder or exercise any option required or permitted by the CAP Delivery Contract so as to interfere with or change the rights and obligations of the Lessee hereunder; and

D. Not to terminate or cancel the CAP Delivery Contract or transfer, convey or permit a transfer or conveyance of

the Contract so as to cause a termination of, interference with, or modification of the rights and obligations under the CAP Delivery Contract.

3.12 Lessee Assignment. The Lessee may not transfer, assign or sublease all or any part of its interest in Project Water outside the boundaries of its existing or future service area without the prior written consent of the Lessor and the Secretary; Provided, That the Lessee shall not transfer, assign, or sublease all or any part of its interest in Project Water hereunder for an amount in excess of that which the Lessee is obligated to pay under this Project Water Lease Agreement without the additional prior written approval of CAWCD and the Secretary. If Project Water under this Project Water Lease Agreement is transferred, assigned or subleased by the Lessee for an amount in excess of that which the Lessee paid for such water under this Project Water Lease Agreement, the excess amount shall be paid forthwith by the Lessee to the CAWCD for application against CAWCD's repayment obligation to the United States; Provided, however, That the Lessee shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs. The Lessee shall not transfer, assign or sublease all or any part of its interest in Project Water if such transfer, assignment or sublease will adversely affect the Lessor without the prior written approval of Lessor. Lessee shall provide to CAWCD and the United States copies of any agreement transferring, assigning or subleasing all or any portion of Lessee's entitlement

under this Project Water Lease Agreement. Approval is hereby granted by the Secretary and the Lessor to the Lessee for the transfer, assignment or sublease of all or any part of its interest in Project Water under this Project Water Lease Agreement to the Arizona Cities of Phoenix, Chandler, Glendale, Mesa, Scottsdale and Tempe, or to its successor(s) in interest within the boundaries of its existing or future service area. Such approval shall be effective only upon the agreement by such transferee, assignee, or sublessee to pay all applicable water service charges associated with the delivery of Project Water, and otherwise to abide by all terms and conditions of this Project Water Lease Agreement.

3.13 CAWCD Repayment. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of water pursuant to this Water Project Lease Agreement shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

4. GENERAL PROVISIONS

4.1 United States Consent to Lease. The United States hereby approves and consents to this Project Water Lease Agreement.

4.2 Effective Date. This Project Water Lease Agreement shall become effective on the enforceability date of the SRPMIC Agreement as set forth in Paragraph 21.6 thereof.

4.3 Effect of SRPMIC Agreement. On the enforceability date of the SRPMIC Agreement, this Project Water Lease Agreement shall

be effective and enforceable between the Lessor and the Lessee notwithstanding the performance or non-performance of other provisions of the SRPMIC Agreement not related to this Project Water Lease Agreement. The provisions of the SRPMIC Agreement that are related to this Project Water Lease Agreement are set forth in Paragraph 19.0 of the SRPMIC Agreement.

4.4 Invalidity of Agreement. If the Lessee's entitlement to Project Water under this Project Water Lease Agreement is determined to be invalid by a final judgment entered over the objection of the Lessee with the result that the Lessor reacquires the right to receive the Project Water, then the Lessor shall refund to the Lessee that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term.

4.5 Curing for Lessee's Nonpayment. If the initial payment is not made on or before the date such payment is due, or if any successive lease payment is not made on the date such payment is due, the Lessee shall be in default and the Lessor shall give written notice of default to the defaulting Lessee. The Lessor shall also send a copy of the notice of default to each other party to the SRPMIC Agreement which has entered into a Project Water Lease Agreement for the lease of the Lessor's Project Water ("Other Cities"). Notice shall be given in the manner and to the city officers specified in Paragraph 21.17 of the SRPMIC Agreement. The notice of default shall specifically describe the default and state the amount due by such Lessee ("Default Amount"). After notice of

default, the rights of the Lessee, the Lessor and the Other Cities shall be as follows:

A. During the first thirty (30) days following the notice of default ("First Grace Period"), the defaulting Lessee shall have the exclusive right to cure any such default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. During the First Grace Period, the defaulting Lessee may cure only by tendering the Default Amount.

B. In the event that the defaulting Lessee has not cured within thirty (30) days following the notice of default, the Lessee, any of the Other Cities, and/or any combination thereof, may thereafter, but within sixty (60) days following the notice of default ("Second Grace Period"), cure the default by tendering the Default Amount to the Lessor together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. Each curing city or town shall succeed to the interest of the defaulting Lessee to the extent of its contribution. A cure effected pursuant to this section shall constitute full performance of such payment obligation.

C. After notice of default and after failure to cure as provided for in Paragraphs 4.5.A. and B. hereof, the defaulting Lessee will be indebted to the Lessor in the

amount of $4,916,800 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By _____
Bureau of Indian Affairs

By _____
Bureau of Reclamation

Attest: _____

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____
Name: Gerald Anton
Title: President

Attest: _____
City Clerk

TOWN OF GILBERT, an Arizona municipal corporation

Attest: _____
City Attorney

By _____
Name: _____
Title: _____

///

amount of $4,916,800 less principal payments made before the default together with interest, costs and reasonable attorneys' fees and the Lessor will be entitled to judgment for such an amount. Payment of the amount provided in this subparagraph shall constitute full performance of the Lessee's obligations under Paragraph 3.3 of this Project Water Lease Agreement.

IN WITNESS WHEREOF the parties have executed this Project Water Lease Agreement on the date written above.

THE UNITED STATES OF AMERICA

By _____

Attest:

_____

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By _____
Name:
Title:

Attest:

_____
City Clerk

TOWN OF GILBERT, an Arizona municipal corporation

Attest:

_____
City Attorney

By _____
Name:
Title:

///

EXHIBIT "3.n."

SRP-RWCD Extension Agreement

SRP-RWCD EXTENSION AGREEMENT

This Agreement, dated as of February 12, 1988, is entered into by the Roosevelt Water Conservation District, an irrigation district duly organized and existing under the laws of the State of Arizona, hereinafter referred to as the "District," and the Salt River Project Agricultural Improvement and Power District, an agricultural improvement district duly organized and existing under the laws of the State of Arizona, and the Salt River Valley Water Users' Association, a corporation organized and existing under the laws of the Territory, now the State, of Arizona, hereinafter collectively referred to as the "Project."

WHEREAS, District and Project now enjoy the benefits of a contract dated October 24, 1924 (hereinafter "the 1924 agreement"), wherein, among other things, Project agreed to deliver water to District; and

WHEREAS, said contract also bound District to pay for annual repairs and periodic relining of certain canals used by Project for the purpose of delivering water to its shareholders; and

WHEREAS, the aforementioned 1924 agreement between Project and District has become the subject of a settlement agreement dated as of February 12, 1988, wherein various named parties have agreed upon a settlement of outstanding water related litigation, including the claims to water rights of the Salt River Pima-Maricopa Indian Community and its members and in which agreement District, Project, and other parties, except the United States

on behalf of Indian tribes other than the Salt River Pima-Maricopa Indian Community, have confirmed (1) the 1924 agreement, (2) the stipulation, decision, and order in W. C. Lehane v. Salt River Valley Water Users' Association, et. al., Cause Number 32021-C, Superior Court of Maricopa County, Arizona, decided on or about September 18, 1940, and (3) the agreement between Project and District dated September 9, 1954; and

WHEREAS, the parties to the settlement agreement set forth terms and conditions which would affect the administration of the 1924 agreement, and they further required an extension of the 1924 agreement by at least 50 years.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree with each other as follows:

ARTICLE I

The 1924 agreement shall be extended beyond its scheduled expiration date until December 31, 2086. From and after the effective date of this Extension Agreement, the obligations of District and Project to render performance under the 1924 agreement, as amended and extended, shall be conditioned upon compliance with the provisions of the settlement agreement, and the terms and conditions of the 1924 agreement, as extended and amended, shall be construed consistent with the settlement agreement.

ARTICLE II

By way of clarifying the responsibility for maintenance and replacement of canal lining, as discussed in Article IX of the

1924 agreement, District shall participate with Project in an annual review of needed repair on the 28 miles of canal for which District currently has maintenance responsibility, as displayed on Exhibit "A" attached hereto. Relining of such reaches of the canals shall be scheduled at such times as the parties may agree upon from time to time and District shall bear the full financial responsibility for repair or relining of such reaches. Accordingly, if at any time District determines that it is in its best interest to pay for relining in lieu of continued repair, District may announce its conclusion to that effect and relining shall be completed in lieu of repair, on a mutually agreeable schedule as soon as reasonably practicable.

ARTICLE III

This Agreement shall take effect on the enforceability date of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement. This Agreement shall inure to the benefit of and be binding upon the successors of the parties hereto, including, without limitation, any operating agent which succeeds to the obligation of Project or District hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date herein first above written.

Approved:

UNITED STATES OF AMERICA

By

SALT RIVER VALLEY WATER USERS' ASSOCIATION

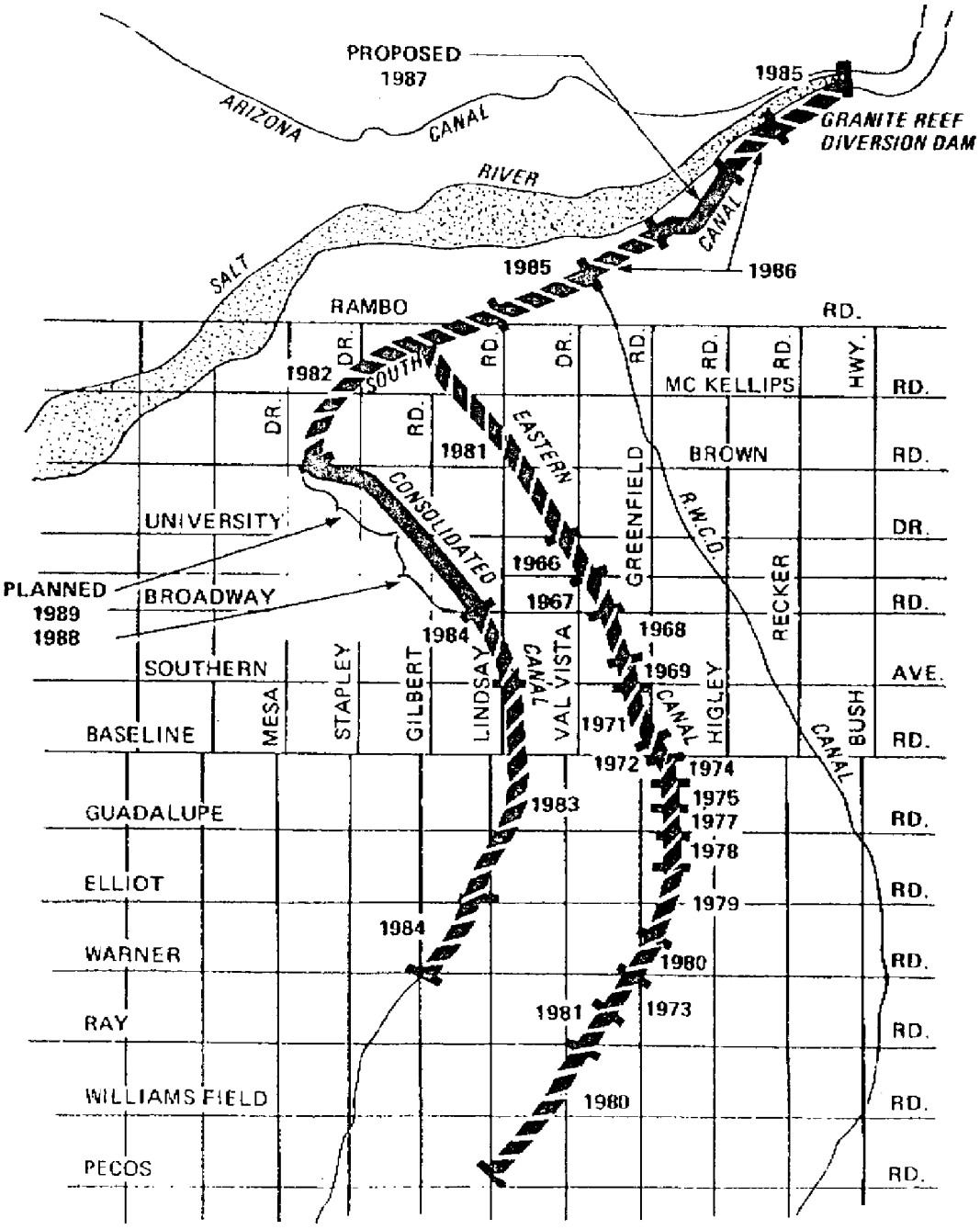
By
Its President

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

By _____
Its President

ROOSEVELT WATER CONSERVATION DISTRICT

By _____
Its President



MAP SHOWING LOCATION OF ORIGINAL LINING INSTALLED AND REPLACED BY R.W.C.D.

LEGEND:

ORIGINAL LINING INSTALLED BY R.W.C.D.

LINING REPLACED BY R.W.C.D.

Exhibit "A"

EXHIBIT "3.o"

Waiver and Release of Claims
(SRPMIC)

WAIVER AND RELEASE OF CLAIMS

(a) Except as provided in paragraph (b) herein, the Salt River Pima-Maricopa Indian Community ("SRPMIC"), on behalf of itself and its members, in consideration of benefits realized by it under the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement dated as of February 12, 1988 (hereinafter referred to as the "SRPMIC Agreement"), and in accordance with its commitment under Paragraph 17.1 of the SRPMIC Agreement and with the authorization granted in Section 10 of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, hereby waives and releases:

(1) all past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water and effluent) for lands within the SRPMIC Reservation, from time immemorial to the date of this Waiver and Release, which SRPMIC may have, or which it may have standing to assert on behalf of its members, against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(2) any and all future claims of rights to water (including water rights in groundwater, surface water, and effluent) for lands within the SRPMIC Reservation, from and

after the date of execution of this Waiver and Release, which SRPMIC may have, or which it may have standing to assert on behalf of its members, against the United States, the State of Arizona, and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona; and

(3) all past, present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water and effluent) for lands outside of the exterior boundaries of the SRPMIC Reservation based upon aboriginal occupancy by the Pima and Maricopa Indians, which SRPMIC may have, or which it may have standing to assert on behalf of its members, against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona.

Nothing herein shall prevent SRPMIC from participating with other entities in further activities to augment the water supply available to the Salt River Valley.

(b) Notwithstanding the execution by SRPMIC of the Waiver and Release herein, SRPMIC, its members, and the United States on their behalf shall retain the right to assert the following claims for lands within the SRPMIC Reservation:

(1) Any claim for damages to water quality; provided, however, that paragraph (a) of this Waiver and Release of Claims shall be construed to bar SRPMIC and its members from

asserting any claim for damages to water quality caused by (a) the withdrawal of groundwater in accordance with the Arizona Groundwater Management Act; (b) the parties' performance of their obligations under the SRPMIC Agreement; (c) changes to water quality caused by the delivery or commingling of water delivered from the CAP with any of the water described in Paragraph 6.0 of the SRPMIC Agreement; or (d) any combination thereof;

(2) Claims for money damages arising prior to the effective date of the authorization provided for in Section 10 of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 asserted against the United States in the United States Claims Court;

(3) Claims of water rights or injuries to water rights, other than those based upon aboriginal occupancy by the Pima and Maricopa Indians, for lands outside of the exterior boundaries of the SRPMIC Reservation acquired by SRPMIC or the United States on behalf of SRPMIC subsequent to January 1, 1985;

(4) Claims in the Gila River Adjudication for the enforcement of SRPMIC's water rights as provided for in the SRPMIC Agreement; and

(5) Claims against any person for the breach or enforcement of the terms of the SRPMIC Agreement or rights recognized therein. The United States and SRPMIC waive their sovereign immunity from suit in Federal District Court in

regard to any claim which relates to the interpretation or enforcement of the SRPMIC Agreement; provided that the reservation of any right to assert a claim herein does not preclude or otherwise limit, in any way, any defenses to such a claim.

Attest:

Secretary

THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By

Its President

APPROVED:

Secretary of the Interior

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
PHOENIX FIELD OFFICE
One Renaissance Square
Two North Central Avenue
Suite 500
Phoenix, Arizona 85004

COMM. (602) 379-4756
(602) 379-4127
FTS: 261-4756
FAX: 261-4127

BIA.PX.0008

March 6, 1990

Mr. Mike Brophy
Ryley, Carlock and Applewhite
101 N. First Avenue, #2600
Phoenix, Arizona 85003-1973

Re: Salt River Pima-Maricopa Indian Water Rights Settlement

Dear Mr. Brophy:

This responds to your letter dated January 18, 1990, concerning exhibit "3.0" to the settlement agreement (the Community's waiver of claims). Your question is whether it is necessary to have the Secretary execute the subject waiver.

This issue has been discussed within the Department, and it was concluded that the Secretary need not execute the waiver. The reason for this is that section 10(b)(1) of the settlement act expressly authorizes the Community to execute the subject waiver concerning water rights claims. In light of this direct Congressional authorization, we see no need for the Secretary to execute the waiver along with the Community.

Sincerely yours,

Fritz L. Goreham
Field Solicitor

William H. Swan
For the Field Solicitor

cc: Shea and Wilks, Tribal Attorneys
Barry Welch, Phoenix Area Office, BIA

EXHIBIT "3.p."

Amendments to Bartlett Dam Agreement

AN AMENDMENT TO THE AGREEMENT BETWEEN THE UNITED STATES AND THE SALT RIVER VALLEY WATER USERS' ASSOCIATION CONCERNING VERDE RIVER STORAGE WORKS

This Amendment, made as of the 1st day of January, 1989, to the Agreement between the United States of America and the Salt River Valley Water Users' Association, a corporation organized and existing under the laws of the Territory, now the State, of Arizona, dated June 3, 1935, is between the United States of America, hereinafter referred to as the "United States," the Salt River Valley Water Users' Association, hereinafter referred to as the "Association," and the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, hereinafter referred to as the "District." The Association and the District are hereinafter jointly referred to as the "Salt River Project."

WITNESSETH

WHEREAS, the United States and the Association entered into that Agreement dated June 3, 1935, for the construction, operation and maintenance of Bartlett Dam on the Verde River, hereinafter referred to as the "Bartlett Dam Agreement;" and

WHEREAS, the Bartlett Dam Agreement allots one-fifth of all developed water, as defined and further limited in that Agreement, to the United States, for and on behalf of the Salt River Pima-Maricopa Indian Community, hereinafter referred to as the Community, and four-fifths of all developed water to the Association; and

WHEREAS, the Association, Phelps Dodge Corporation, a corporation organized under the laws of the State of New York and duly authorized to conduct business in the State of Arizona, and the Defense Plant Corporation, a corporation created by the Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, entered into an Agreement dated March 1, 1944, for the construction, operation and maintenance of Horseshoe Dam on the Verde River, hereinafter referred to as the "Horseshoe Dam Agreement;" and

WHEREAS, the Horseshoe Dam Agreement provides in Article II, Section 6 that the Association will consider all increases in the amount of water stored in Bartlett Reservoir and Horseshoe Reservoir, in excess of five percent of the effective capacity of Bartlett Reservoir and up to the total net effective capacity of Bartlett Reservoir, the same as if such water were stored in Bartlett Reservoir in the first instance, or, said computation will be made in such other manner as shall be mutually acceptable to the United States and the Association; and

WHEREAS, the rights and obligations of the Association under the Bartlett Dam Agreement and the Horseshoe Dam Agreement were transferred to and assumed by the District pursuant to a contract dated March 22, 1937, and the amendments thereto dated February 28, 1944, and September 12, 1949; and

WHEREAS, the United States; the Community; the State of Arizona; the Salt River Project; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of

Phoenix, Scottsdale, Glendale, Mesa, Tempe and Chandler and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District have agreed through the SRPMIC Settlement Agreement, dated as of February 12, 1988, to settle once and for always the water rights of SRPMIC; and

WHEREAS, as part of the SRPMIC Settlement Agreement the United States and the Salt River Project agreed to amend the Bartlett Dam Agreement's allocation of developed water to the Community, as expressly contemplated by Article II, Section 6 of the Horseshoe Dam Agreement; and

WHEREAS, the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Act of October 20, 1988, Pub.L. No. 100-512, 102 Stat. 2553, directs the United States, acting through the Secretary of Interior, to amend the Bartlett Dam Agreement as provided therein;

NOW, THEREFORE, in consideration of the premises and the promises and agreements hereinafter set forth, it is agreed as follows:

1. Article 4 of the Bartlett Dam Agreement shall be deleted and replaced with the following language:

ARTICLE 4

Operation of Storage Works

The works to be constructed upon Verde River shall be operated and maintained by the Association. The Association may at any time store any part or all of flow of Verde River in the reservoir, and may at any time release any quantity of water from the reservoir or it may permit the river to flow through the reservoir without regulation.

2. The following paragraphs shall be added to Article 6 of the Bartlett Dam Agreement:

Salt River Valley Water Users' Association shall increase the total Community allotment of developed water under this Agreement to twenty thousand acre feet on December 31 of any calendar year in which all of the following three conditions occur:

A. For at least two hundred ninety-two days of the calendar year the total water stored in Salt River Valley Water Users' Association reservoirs on the Verde River is more than the storage capacity of Bartlett Dam Reservoir, which, for the purposes of this Amendment, is deemed to be one hundred seventy-eight thousand one hundred eighty-six acre-feet, as periodically adjusted by Salt River Valley Water Users' Association for silt losses;

B. The total Community allotment of developed water under the Bartlett Dam Agreement generated during the calendar year is less than seven thousand acre-feet;

C. The total Community allotment of developed water under the Bartlett Dam Agreement existing at the end of the calendar year is less than twenty-thousand acre-feet.

Salt River Project shall provide monthly reports to the Community showing the balance of the Community's allotment of developed water as of the end of each month.

3. A new Article 15 shall be added to the Bartlett Dam Agreement, providing as follows:

Except for claims arising after the effective date of this Amendment to enforce the Bartlett Dam Agreement as amended, the United States waives all claims which the United States may have, in its own right or on behalf of the Community, against any person based upon

(A) water rights or injuries to water rights of the Community, its members or allottees under the Bartlett Dam Agreement; or

(B) water rights or injuries to water rights held by the United States on behalf of the Community, its members or allottees under the Bartlett Dam Agreement.

4. This Amendment will become effective ~~on~~ as of the 1ST day of January, 1989.

Except as provided in this Amendment, all terms and conditions of the Bartlett Dam Agreement and the Horseshoe Dam Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF the parties hereto have caused this Amendment to be executed as of the day and year first above written.

The United States of America

By _____
Bureau of Indian Affairs

By _____
Bureau of Reclamation

ATTEST:

By _____
Its SECRETARY

Salt River Project Agricultural Improvement and Power District

By _____
Its PRESIDENT

ATTEST:

By _____
Its SECRETARY

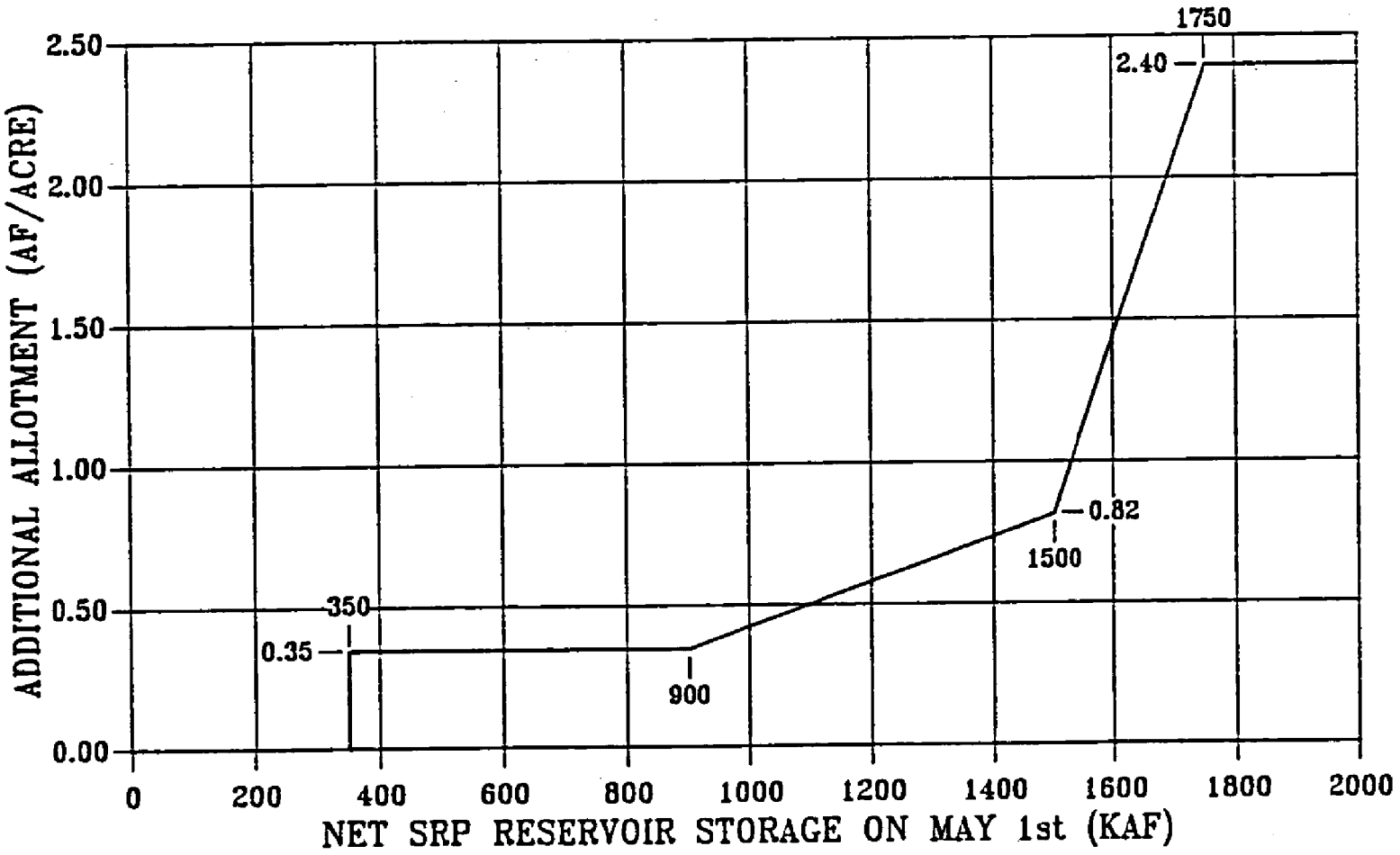
Salt River Valley Water Users' Association

By _____
Its _____

EXHIBIT "8.1"

Additional Stored Water

SRPMIC
ADDITIONAL SURFACE WATER ALLOTMENT



2/12/88

EXHIBIT "10.2"

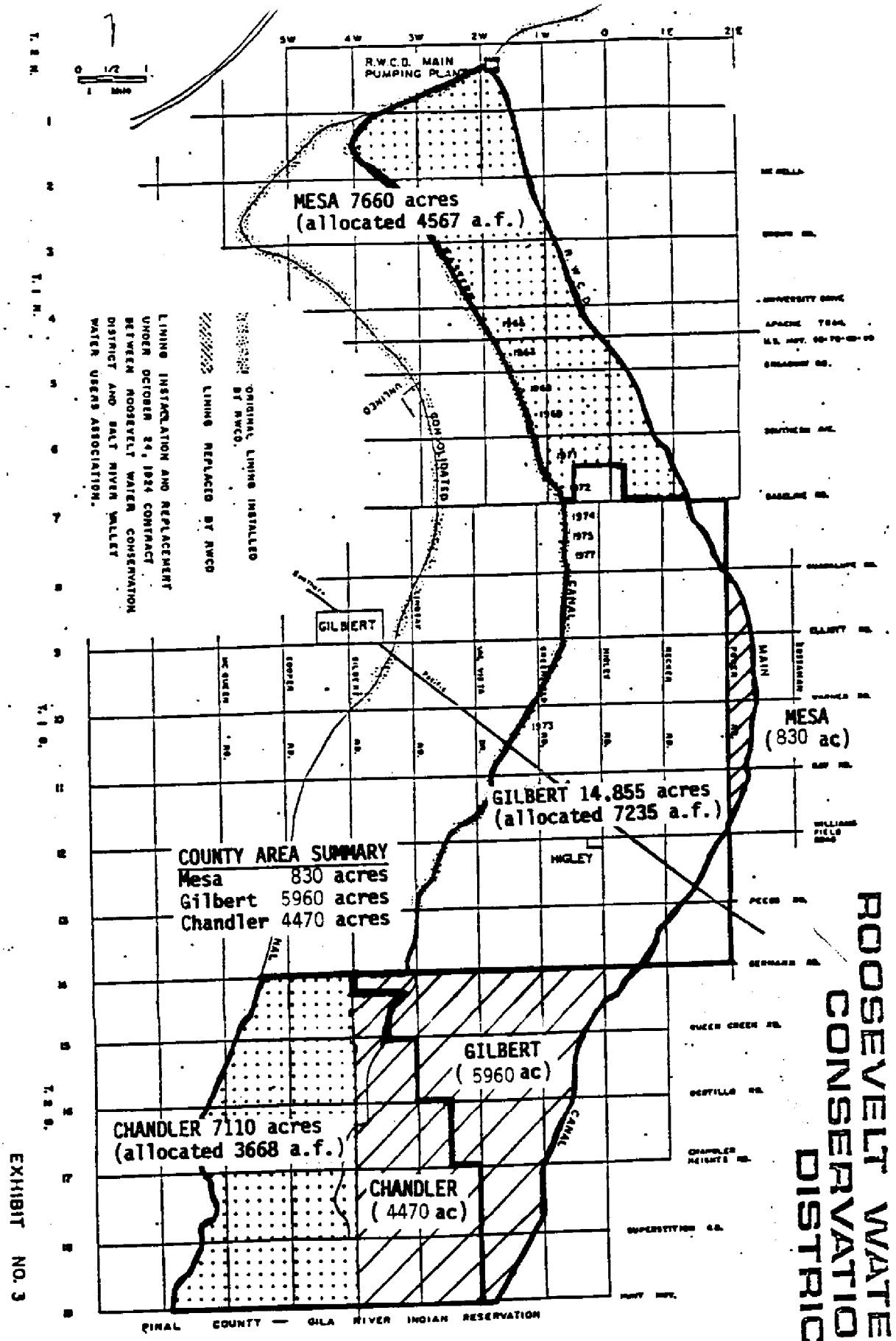
RWCD Credit Lands

Land Classifications Subject to RWCD Credit
of 5.6% of Water Diverted at Granite Reef Dam

CLASSIFICATION	ACRES
Association Regular Member Land	200,074.50
Special District Land - Tempe	22,494.65
Special District Land - Mormon Flat	9,707.30
Special District Land - Utah	2,091.65
New State Irrigation and Drainage District	2,327.70
Maricopa Garden Farms	1,258.10
Pump Contract Land (surface water only)	215.10
SUBTOTAL ASSOCIATIONS LANDS	238,170.00
Townsite Lands	9,615.30
Tempe Non-Member	458.35
Normal Flow Only Land Within SRRD	79.10
State of Arizona Tree Rows	35.50
SRPMIC Land in Sections 34, 35, & 36, T2N R5E	1,125.00
TOTAL	249,483.25

EXHIBIT "10.3"

Map Showing RWCD Boundaries
and
City CAP Planning Areas



ROOSEVELT WATER CONSERVATION DISTRICT

PROPOSED PROJECT

EXHIBIT NO. 3

EXHIBIT "12.3"

RWCD ASSIGNMENT TO CITIES

ASSIGNMENT

THIS AGREEMENT, dated as of February 12, 1988, is made and entered into by and among the United States of America acting through the Secretary of the Interior, the Central Arizona Water Conservation District, the Roosevelt Water Conservation District, the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa and Phoenix, and the Arizona Town of Gilbert.

R E C I T A L S

A. The United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members.

B. The foregoing settlement agreement requires the assignment by the Roosevelt Water Conservation District to the Cities and Town participating in the settlement of a portion of the agricultural water supply available to Roosevelt Water Conservation District from the Central Arizona Project.

C. The settlement agreement further requires the Secretary of the Interior, in certain events, to make available to the Cities and Town participating in the settlement a portion of the

agricultural water supply otherwise available from the Central Arizona Project.

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) "Cities" shall mean the City of Chandler, the City of Glendale, the City of Scottsdale, the City of Tempe, the City of Mesa, the City of Phoenix and the Town of Gilbert.

(b) "City" shall mean any one of the Cities.

(c) "Contractor" shall mean the Central Arizona Water Conservation District.

(d) "Repayment Contract" shall mean the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 15, 1972 (Contract No. 14-06-W-245), and any amendment or revision thereof.

(e) "Secretary" and "Contracting Officer" shall mean the Secretary of the Interior or his duly authorized representative.

(f) "Settlement Agreement" shall mean the Agreement dated as of February 12, 1988, among the United States of America; the Salt River Pima-Maricopa Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District.

(g) "Subcontract" shall mean the Subcontract among the United States, the Central Arizona Water Conservation District, and the Roosevelt Water Conservation District, Providing for Water Service, Central Arizona Project, dated [to be supplied] (Contract No. [to be supplied]).

(h) "Subcontractor" shall mean the Roosevelt Water Conservation District.

All other terms used in this Agreement which are defined in the Repayment Contract or the Subcontract shall have the meanings ascribed to them in the Repayment Contract and the Subcontract.

2. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, and for each Year thereafter until the term of the Subcontract expires, Subcontractor hereby assigns to the Cities an amount of Project Water, to be taken from Subcontractor's annual entitlement to Agricultural Water under Article 4.13 of the Subcontract, equal to the lesser of (a) 5,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, or (b) such amount of Project Water as is available from Subcontractor's annual entitlement to Agricultural Water after first providing for delivery to the Subcontractor, at the Subcontractor's Project turnout, of 8,000 acre-feet of Agricultural Water.

3. (a) If and when, as a result of a reduction in the acreage of eligible lands in Subcontractor's service area,

Subcontractor's entitlement to Agricultural Water under Article 4.13 of its Subcontract is insufficient to provide for the delivery to the Cities at the Cities' Project turnouts of a total amount of 3,000 acre-feet of Project Water (after first providing for the delivery of Subcontractor's entitlement to Agricultural Water as determined in accordance with subparagraph (b) of this Paragraph) in a Year in which the total supply of Agricultural Water available for delivery from the Project is 450,000 acre-feet or more, the Secretary shall thereafter make available for delivery to the Cities from the total supply of Agricultural Water otherwise available for delivery from the Project in each Year an amount of Project Water equal to the difference between (i) 3,000 acre-feet, to be made available to the Cities at the Cities' Project turnouts, and (ii) the amount of Project Water available to the Cities as a result of the assignment made in Paragraph 2 of this Agreement.

(b) If and when the provisions of subparagraph (a) of this Paragraph are implemented, Subcontractor's entitlement (i) to 8,000 acre-feet of Agricultural Water under subparagraph (b) of Paragraph 2 of this Agreement or (ii) to such lesser amount of Agricultural Water as may be determined in conformance with the provisions contained in subparagraph (d) of Paragraph 12 of this Agreement shall be subject to reduction in an amount equal to Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract multiplied by the amount of Agricultural Water made available by the Secretary for delivery to the Cities pursuant to subparagraph (a) of this Paragraph.

(c) Attached hereto as Appendix A are examples of how Paragraphs 2 and 3 of this Agreement are intended to operate under various conditions.

4. (a) Project Water made available to the Cities pursuant to Paragraph 2 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	972 acre-feet per Year;
City of Glendale	=	682 acre-feet per Year;
City of Scottsdale	=	23 acre-feet per Year;
City of Tempe	=	23 acre-feet per Year;
City of Mesa	=	627 acre-feet per Year;
City of Phoenix	=	1,136 acre-feet per Year;
Town of Gilbert	=	1,537 acre-feet per Year;
TOTAL	=	5,000 acre-feet per Year.

(b) Project Water made available to the Cities pursuant to Paragraph 3 of this Agreement shall be distributed among the Cities pro rata in proportion to the following maximum annual entitlements:

City of Chandler	=	583 acre-feet per Year;
City of Glendale	=	409 acre-feet per Year;
City of Scottsdale	=	14 acre-feet per Year;
City of Tempe	=	14 acre-feet per Year;
City of Mesa	=	376 acre-feet per Year;
City of Phoenix	=	682 acre-feet per Year;
Town of Gilbert	=	922 acre-feet per Year;
TOTAL	=	3,000 acre-feet per Year.

(c) Prior to the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted by mutual agreement of such Cities. On and after the enforceability date of the Settlement Agreement, the relative amounts of Project Water to be made available to each of the Cities pursuant to subparagraphs (a) and (b) of this Paragraph may be adjusted only by mutual agreement of such Cities, the Contractor, and the United States.

(d) In the event this Agreement shall become effective and any City ("designating City") entitled to receive water hereunder is unable to take delivery of such water by virtue of not having constructed a treatment plant capable of taking deliveries of water from the Central Arizona Project, the designating City shall in writing designate one or more Cities which are also parties to this Agreement to act as the interim recipients ("interim recipient") of the designating City's water, and water made available to the designating City under this Agreement shall be delivered by Contractor to the interim recipient(s) until such time as the designating City's treatment plant is completed and ready to take delivery of and treat deliveries of water from the Central Arizona Project. The designating City shall notify Contractor and Subcontractor of any such designation and shall also provide Contractor and Subcontractor with copies of any agreement between the designating City and the interim recipient(s). Any

such agreement shall not be inconsistent with any provisions of the Repayment Contract, the Subcontract, or this Agreement.

5. Notwithstanding anything in the Repayment Contract or the Subcontract to the contrary, Project Water made available to the Cities pursuant to this Agreement may be used for any M&I Water uses including but not limited to ground water recharge.

6. Notwithstanding any schedule or other instruction to the contrary, Project Water made available to the Cities pursuant to this Agreement, including any water delivered under a designation agreement entered into pursuant to Paragraph 4(d) hereof, shall be accounted for and treated by the Contractor and the Contracting Officer as having been scheduled for delivery by the Cities, and delivered to the Cities, prior to the delivery of any portion of the Cities' entitlements to Project M&I Water under the Cities' M&I Water service subcontracts (City of Chandler, Contract No. 5-07-30-W0070; City of Glendale, Contract No. 5-07-30-W0062; City of Scottsdale, Contract No. 5-07-30-W0063; City of Tempe, Contract No. 5-07-30-W0061; City of Mesa, Contract No. 5-07-30-W0060; City of Phoenix, Contract No. 5-07-30-W0059; Town of Gilbert, Contract No. [to be supplied]), prior to the delivery of any portion of the Cities' entitlements to under the Cities' Project Water Lease Agreements (Exhibits "3.m.1" through "3.m.7" of the Settlement Agreement), and prior to the delivery of any portion of the Cities' entitlements to "Colorado River water" under and as defined in the Cities' River Water Exchange Contracts (Exhibits "3.h.1" through "3.h.7" of the Settlement Agreement).

7. Except as otherwise provided in Paragraph 11 hereof, the Cities shall make payment for Project Water made available to the Cities pursuant to this Agreement in accordance with the terms and conditions of contracts to be entered into among the United States, the Contractor, and each of the Cities, the forms of which are attached as Exhibits "3.h.1" through "3.h.7" to the Settlement Agreement.

8. Except as provided in Paragraph 10 of this Agreement, nothing in this Agreement shall relieve the Subcontractor of its obligation to make the payments required in the Subcontract.

9. For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of the Repayment Contract, the costs associated with the delivery of Project Water to the Cities pursuant to this Agreement shall be nonreimbursable, and such costs shall be excluded from the Contractor's repayment obligation.

10. Commencing with the later of the Year in which the Secretary issues Notice of Completion of the Water Supply System or the enforceability date of the Settlement Agreement, as defined in Paragraph 21.6 thereof, the Subcontractor's obligation to pay Agricultural Water service capital charges pursuant to Subarticle 5.2(a) of the Subcontract shall be reduced in each Year by an amount equal to $2.00 per acre-foot, or such amount as may be determined by the Contracting Officer based on payment capacity determinations provided for in the Repayment Contract, multiplied by the total amount of Project Water assigned by the Subcontractor

to the Cities pursuant to Paragraph 2 of this Agreement and scheduled for delivery by the Cities in such Year.

11. (a) Each City agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any operation, maintenance, and replacement costs associated with Project Water made available for delivery to the City pursuant to Paragraph 2 of this Agreement. Each City further agrees to indemnify and hold harmless the Contractor and the Subcontractor from and against any Agricultural Water service capital charges associated with any Project Water assigned by the Subcontractor to the City pursuant to Paragraph 2 of this Agreement. The liability of each City under this Paragraph 11(a) shall be its sole and separate obligation, and shall not be an obligation joint and several with any other City or Cities.

(b) In the event any City shall default and fail to indemnify Contractor or Subcontractor as required in Paragraph 11(a) hereof, then such City's entitlement to water under this Agreement shall be forfeit and such entitlement shall be redistributed pro rata to each of the other Cities which are parties to this Agreement. The redistribution of water shall be effected by means of a notice from Subcontractor and Contractor, if either has not been indemnified, to the defaulting City and to the other Cities which are parties to this Agreement, and such redistribution shall be effective on the thirty-fifth day after the notice is given. Within ten days of receiving the notice of re-distribution, each City other than the defaulting City shall pay to

Subcontractor or Contractor, as the case may be, its share of the amount the defaulting City shall have failed to pay, which share shall be in the proportion which the amount of water redistributed to such City bears to the total amount of water redistributed. In the event any City to which water is redistributed shall fail to make the payment hereby required to be made within the time herein prescribed, Subcontractor or Contractor, as the case may be, shall be free to redistribute such City's entitlement to redistributed water to any other City which makes such payment and which is also a party to this Agreement.

12. (a) Subcontractor's entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be 5.98 percent of the total supply of Agricultural Water available for delivery from the Project (subject to reduction by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer) unless, prior to the issuance by the Secretary of Notice of Completion of the Water Supply System, Subcontractor notifies the Contractor and the Contracting Officer that it wishes to reduce its entitlement to a lesser percentage of the total Agricultural Water supply. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement under Subarticle 4.13(a) of the Subcontract shall be as stated in the notice from the Subcontractor to the Contractor and the Contracting Officer.

(b) Notwithstanding the foregoing, the Contractor and the Contracting Officer may at any time prior to the issuance of

such Notice of Completion require the Subcontractor to specify its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract by notifying the Subcontractor that it must specify such entitlement within six months of the date that the Contractor and the Contracting Officer issue such notice. Subject to the requirements and limitations of this Paragraph 12, Subcontractor's percentage entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract shall be as specified by the Subcontractor in response to the notice issued by the Contractor and the Contracting Officer. In the event the Subcontractor fails to make such specification within the time required, Subcontractor's entitlement shall be fixed at 5.98 percent of the total Agricultural Water supply (subject to adjustment by reason of the factors identified in Subarticle 4.13(a) of the Subcontract as determined by the Contracting Officer).

(c) At the time the Subcontractor notifies the Contractor and the Contracting Officer of its percentage entitlement pursuant to subparagraph (a) of this Paragraph, or at the time the Subcontractor specifies its entitlement pursuant to subparagraph (b) of this Paragraph, Subcontractor may relinquish:

(i) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(a) of the Subcontract to be made available to the Subcontractor as a result of deductions made in other subcontractors' entitlements to Agricultural Water to reflect removal of eligible lands from agricultural use; and

(ii) all or part of its rights to any additional Agricultural Water entitlement under Subarticle 4.13(b) of the Subcontract to be made available to the Subcontractor as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available;

Provided, however, that the Subcontractor shall relinquish at least 5,000 acre-feet, or the percentage of the projected Agricultural Water supply that most closely approximates 5,000 acre-feet, of any additional Agricultural Water entitlement to which the Subcontractor would be entitled under Subarticle 4.13(b) of the Subcontract as a result of the Secretary's reallocation of entitlements to Agricultural Water that were not contracted for by the entities to which such entitlements were first made available.

(d) Subject to the requirements and limitations of this Paragraph 12, Subcontractor may select its entitlement to Agricultural Water under Subarticle 4.13(a) of the Subcontract based upon its own evaluation of potential Agricultural Water supplies and its own requirements; Provided, however, that said Subcontractor's entitlement to Agricultural Water shall in no event exceed the lesser of 5.98 percent or the percentage entitlement determined by dividing the number of acres of eligible lands in the Subcontractor's service area by the total number of acres of eligible lands in the service areas of all subcontractors of Agricultural Water, as determined by the Contracting Officer.

13. Except as provided in this Agreement, all terms and conditions of the Subcontract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

Attest:

_____
Secretary

CENTRAL ARIZONA WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: George W. Barr
Title: President

Attest:

_____
Secretary

ROOSEVELT WATER CONSERVATION DISTRICT, an Arizona municipal corporation

By _____
Name: Mark W. Dobson
Title: President

Attest:

_____
Clerk

Approved as to Form:

_____
City Attorney

CITY OF PHOENIX, a Municipal corporation, MARVIN A. ANDREWS, City Manager

By _____

Attest:

Mark G. Mappo
Clerk

Approved as to Form:

Barbara R. Goldberg
City Attorney

CITY OF SCOTTSDALE, an Arizona municipal corporation

By [signature]
Name: Herbert R. Drinkwater
Title: Mayor

Attest:

Javergne Fehm
Clerk

Approved as to Form:

[signature]
City Attorney

CITY OF GLENDALE, an Arizona municipal corporation

By [signature]
Name: George R. Renner
Title: Mayor

Attest:

[signature]
Clerk

Approved as to Form:

Neal Beets
City Attorney

CITY OF MESA, an Arizona municipal corporation

By [signature]
Name: [illegible]
Title: [illegible]

Attest:

Helen R. Fowler
Clerk

Approved as to Form:

[signature]
City Attorney

CITY OF TEMPE, an Arizona municipal corporation

By Harry E. Mitchell
Name: Harry E. Mitchell
Title: Mayor

. . .

Attest:

Clerk, Acting

Approved as to Form:

City Attorney

CITY OF CHANDLER, an Arizona municipal corporation

By
Name: Richard Dugan
Title: Mayor

Attest:

Clerk

Approved as to Form:

City Attorney

TOWN OF GILBERT, an Arizona municipal corporation

By
Name: Steve M. Berman
Title:

. . .

APPENDIX A

The following are five examples of how Paragraphs 2 and 3 of the Assignment are intended to operate under varying water supply conditions and assuming varying entitlements to CAP Agricultural Water for Roosevelt Water Conservation District ("RWCD") under Subarticle 4.13(a) of RWCD's CAP Agricultural Subcontract.

EXAMPLE 1

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 1,000,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 5.98%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 59,800 AF.

(5.98% X 1,000,000 AF - 59,800 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 59,800 AF - 8,000 AF = 51,800 AF

5. RWCD's balance = 54,800 AF.

EXAMPLE 2

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 13,005 AF.

(2.89% X 450,000 AF = 13,005 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

(a) 5,000 AF, or

(b) 13,005 AF - 8,000 AF = 5,005 AF.

5. RWCD's balance = 8,005 AF.

EXAMPLE 3

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.89%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,890 AF.

(2.89% X 100,000 AF = 2,890 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment = 0 (because RWCD's entitlement is sufficient to provide for delivery to the Cities of at least 3,000 AF in any year in which the total supply is 450,000 AF or more -- See Example 2).

EXAMPLE 4

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 450,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 10,980 AF.

(2.44% X 450,000 AF - 10,980 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = the lesser of:

   (a) 5,000 AF, or

   (b) 10,980 AF - 8,000 AF = 2,980 AF.

5. Cities' entitlement under Paragraph 3 of the Assignment =

   (a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area:

   Cities' entitlement = 3,000 AF - 2,980 AF = 20 AF

   CITIES' TOTAL = 3,000 AF

   (b) IF 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0

   CITIES' TOTAL = 2,980 AF

EXAMPLE 5

1. Assume the total amount of CAP Agricultural Water available for delivery in a given Year (after losses) = 100,000 AF.

2. Assume RWCD's percentage entitlement under Subarticle 4.13(a) of the Subcontract = 2.44%.

3. RWCD's total entitlement to Agricultural Water in such Year under Subarticle 4.13(a) of the Subcontract = 2,440 AF.

(2.44% X 100,000 AF = 2,440 AF)

4. Cities' entitlement under Paragraph 2 of the Assignment = 0.

5. Cities' entitlement under Paragraph 3 of the Assignment:

(a) IF 2.44% is a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement = 3,000 AF.

(b) RWCD's contribution = 2.44% X 3,000 AF = 73 AF.

(c) RWCD's net entitlement = 2,440 AF - 73 AF = 2,367 AF.

BUT

(d) If 2.44% is not a result of a reduction in eligible acreage in RWCD's service area, Cities' entitlement under Paragraph 3 of the Assignment = 0.

EXHIBIT "12.14"

TRUST AGREEMENT

#54170

TRUST AGREEMENT

THIS TRUST AGREEMENT FOR THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT TRUST FUND (hereinafter referred to as the "Trust Agreement") is made and entered into as of the 12th day of February, 1988, by and between the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe and Chandler, Arizona, and the Town of Gilbert, Arizona, each a governmental municipal corporation organized under the laws of the State of Arizona (hereinafter referred to collectively as the "DEPOSITOR CITIES" or "DEPOSITORS" and individually as "DEPOSITOR CITY" or "DEPOSITOR"), and the STATE TREASURER OF THE STATE OF ARIZONA (hereinafter referred to as the "TRUSTEE").

P R E A M B L E

WHEREAS, the United States, the State of Arizona, the Salt River Pima-Maricopa Indian Community ("SRPMIC"), the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District ("SRP"), the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe and Chandler, Arizona, the Town of Gilbert, Arizona, and the Central Arizona Water Conservation District ("CAWCD") have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members to finally resolve pending litigation on water rights and damage claims and have executed a settlement . . .

agreement (hereinafter referred to as the "Settlement Agreement"); and

WHEREAS, pursuant to the Settlement Agreement, the Depositor Cities agreed to an exchange of water (the "River Water Exchange"); and

WHEREAS, pursuant to the Settlement Agreement, each Depositor City has entered into an agreement with the United States and CAWCD providing for delivery of Colorado River water as part of the River Water Exchange (the "River Water Exchange Contract"); and

WHEREAS, the Settlement Agreement provides for the establishment of an escrow account to hold monies deposited by the Depositor Cities to be used by the United States to carry out the River Water Exchange; and

WHEREAS, the City Council of each Depositor City has by ordinance or resolution, copies of which are attached as Exhibit A, authorized the Settlement Agreement providing, among other things, for the establishment of an escrow account hereinafter identified as SRPMIC City Exchange Trust Fund to be held in trust for the purposes outlined in the Settlement Agreement and the River Water Exchange Contract; and

WHEREAS, the Depositor Cities and the Trustee have agreed that the Fund shall be maintained by the Trustee pursuant to Title 35, Chapter 2, Article 2, Arizona Revised Statues;

THEREFORE, the Depositor Cities and the Trustee agree to the following:

. . .

ARTICLE ONE

ESTABLISHMENT OF A TRUST RELATIONSHIP

1.1 Acceptance of Trust. The Trustee hereby accepts this trust as evidenced by the Trustee's execution of this Trust Agreement. This trust shall be known as the SRPMIC CITY EXCHANGE TRUST FUND ("the Fund").

1.2 Administration of Fund. The Trustee shall hold, administer and invest the Fund and all sums paid to the Trustee in accordance with the provisions of this Trust Agreement. The Trustee shall receive any deposits paid to the Trustee in cash or in such other form as the Trustee may deem acceptable. All deposits so received shall hereinafter be referred to as the "Fund" and shall be held, administered and distributed by the Trustee pursuant to the terms of this Trust Agreement.

ARTICLE TWO

DEPOSITS

2.1 Deposits to the Fund. The Trustee shall receive any monies paid to the Trustee for deposit to the Fund by the Depositors. Each Depositor shall have a separate account within the Fund. Upon receipt, the Trustee shall issue the Depositor a ~~v~~alidated receipt for the amount of the deposit and shall provide a copy of such receipt to all other participants in the Settlement Agreement at the addresses provided in attached Exhibit B. In the event a Depositor makes a deposit on behalf of another City pursuant to the Curing Agreement, attached hereto as Exhibit C, the . . .

deposit shall be credited to a separate account(s) as specified by the Depositor.

2.2 Amount and Date of Deposit. By October 20, 1989, the Depositors shall make collected funds in the following amounts available to the Trustee for deposit in the Fund:

City of Chandler	$1,750,500
City of Glendale	1,227,600
City of Scottsdale	40,500
City of Tempe	40,500
City of Mesa	1,129,500
City of Phoenix	2,045,700
Town of Gilbert	2,765,700
TOTAL.	$9,000,000

ARTICLE THREE

DISBURSEMENTS

3.1 Disbursements from the Fund. The Trustee shall make payment from the Fund to the United States through the Secretary of Interior, or his designee at his discretion, in accordance with Paragraph 3.3 hereof. If the Depositor has made a deposit on behalf of another Depositor City ("Original Obligee") pursuant to the Curing Agreement, the Trustee shall create a new account in the Fund for the deposit ("Curing Account"). Each Curing Account shall be identified by the name of the Original Obligee and the Depositor City making the curing payments ("Curing City"). The funds in the Curing Account shall be allocated as if the Curing Account deposit had been made by the Original Obligee and the Trustee is authorized to disburse from such account for the authorized purposes. Upon making payment from the Fund, the Trustee shall notify the Depositor Cities of the amount of and recipient of the payment and

shall provide a copy of such notice to all other participants to the Settlement Agreement at the addresses provided in Exhibit B.

3.2 Purpose. Monies from the Fund are to be expended by the United States Department of the Interior for the purpose of acquiring the rights to Colorado River water specified in Paragraph 12.1 of the Settlement Agreement, and may be expended only for the purpose of paying the purchase price to be paid to the landowners and such necessary and reasonable costs as are customarily incurred by purchasers in acquiring real estate in Arizona.

3.3 Disbursement Instructions. The Trustee shall make payment from the Fund to the United States through the Secretary of Interior or his designee at his discretion, upon written instruction executed by all Depositor Cities that have deposited monies into the Fund and deposit by the United States with the Trustee the following statement:

> The undersigned, being duly authorized on behalf of the United States through the Secretary of Interior, does hereby unequivocally and irrevocably certify: (1) that all conditions precedent to the United States' delivery of 22,000 acre-feet of Colorado River water annually to the Cities under the SRPMIC Water Rights Settlement Agreement, dated as of February 12, 1988, have been fully satisfied but for the payment of up to Nine Million Dollars ($9,000,000) by the Cities; (2) that upon payment of said sum by the Cities, the United States is ready, willing and able to provide the Cities with 22,000 acre-feet of Colorado River water annually in accordance with the SRPMIC Water Rights Settlement Agreement; (3) that I have been duly authorized to receive said $9,000,000; and (4) that said funds shall be used exclusively to fund the

. . .

acquisition of rights to Colorado River water, as provided in the Settlement Agreement.

DATED this _____ day of _____, 19___.

By_____
As Authorized Representative
of the United States through
the Secretary of the Interior

The Trustee shall pay the United States within 5 business days of receipt of both the request for payment by the United States and the written instruction executed by all of the Depositor Cities. The payment made by the Trustee shall be in the amount requested by the United States, subject to the allowable purposes stated in Paragraph 3.2 hereof and in the Settlement Agreement, but in no event more than a total of $9 million. If the amount requested by the United States is less than $9 million, payment shall be prorated from the accounts of all of the Depositor Cities in the following percentages:

City of Chandler	19.45%
City of Glendale	13.64%
City of Scottsdale	0.45%
City of Tempe	0.45%
City of Mesa	12.55%
City of Phoenix	22.73%
Town of Gilbert	30.73%
	100.00%

If a Curing Account has been created, payment shall be made from that account in the percentage listed above for the Original Obligee.

. . .

ARTICLE FOUR

EARNINGS

4.1 Disposition of Earnings. The Trustee shall credit to the Depositor any earnings received on monies deposited in the Fund by the Depositor, on a monthly basis as soon as practicable following the end of each month.

4.2 Basis. Income on monies of the Fund shall be calculated and paid in the same manner as provided for monies held by the Trustee pursuant to Section 35-326, Arizona Revised Statutes, as it may be amended from time to time.

ARTICLE FIVE

POWERS OF THE TRUSTEE

5.1 Administrative Powers. The Trustee shall administer the Fund in the manner contemplated by Title 35, Chapter 2, Article 2, Arizona Revised Statutes, as it may be amended from time to time, and in accordance with his statutory powers and duties.

5.2 Investment Powers. The Trustee shall invest the assets of the Fund in any security authorized for investment pursuant to Title 35, Chapter 2, Article 2, and may commingle the assets of the fund with monies or other funds maintained by the Trustee that are oriented toward such investments.

ARTICLE SIX

ACCOUNTS AND RECORDS

6.1 Accounting. The Trustee shall maintain records and accounts of all investments, receipts and disbursements. Such records of the Trustee shall be open to the inspection of the

Depositor and the United States, or their authorized representatives at all reasonable times. As soon as possible following the close of each month, the Trustee shall provide, to the Depositor Cities and the Secretary of Interior or his designee, a statement of activities, including deposits, disbursements and earnings, a copy of any requests for payment received and a statement of the balances in the Fund.

ARTICLE SEVEN

FIDUCIARY RESPONSIBILITY OF THE TRUSTEE

7.1 Scope of Duties. The duties and obligations of the Trustee acting as Trustee hereunder shall be strictly limited to those expressly imposed upon the Trustee by this Trust Agreement and by applicable law. The Trustee shall not be required to give bond for the performance of the Trustee's duties. All persons dealing with the Trustee are released from inquiry into the decision or authority of the Trustee and from seeing to the application of any monies, securities or other property paid or delivered to the Trustee. The exercise by the Trustee of any express or implied discretion pursuant to this Trust Agreement shall be conclusive and binding upon the parties to this Agreement, but the Trustee shall have the right to reconsider and redetermine such actions. The Trustee shall not be liable for the distribution of any part of the Fund if distributions are made in accordance with and pursuant to this Trust Agreement, as herein provided. The Trustee may recoup reasonable administrative costs, which shall be billed to the Depositor Cities.

7.2 Communications. Any notice or directions to the Trustee from a Depositor City shall be in writing signed by or on behalf of the Depositor City or by its duly authorized representative and delivered to the Trustee. The Trustee shall be responsible only for such notices or directions as are actually received by the Trustee. The Trustee shall incur no liability in acting upon any such notice or direction reasonably believed by the Trustee to be genuine and to have been signed by the proper person(s). The Trustee shall send a copy of any notice or direction received from a Depositor City to all other Depositor Cities and the Secretary of Interior or his designee.

ARTICLE EIGHT

AMENDMENT AND TERMINATION OF THE TRUST

8.1 Amendment. The Depositor Cities shall have the right at any time by a duly authorized instrument in writing, duly executed by all Depositor Cities and delivered to the Trustee, to modify, alter or amend this Trust Agreement, in whole or in part, prospectively; provided, however, that if the amendment increases or significantly affects the duties, powers and liabilities of the Trustee hereunder, the Trust Agreement may be amended only with the Trustee's prior written consent.

8.2 Termination. The Trust created pursuant to this Trust Agreement may be terminated only upon (a) the payment to the United States of the amount due for the purchase of water rights and related expenses in accordance with the Settlement Agreement; (b) termination of the Settlement Agreement; (c) upon mutual agree-

ment by the Depositor Cities and the Secretary of Interior of the United States; or (d) as to an individual Depositor, if the Depositor's interest is terminated pursuant to the terms of the Curing Agreement. In the event a request for payment from the United States has not been received by the Trustee by December 31, 1991, or in the event of a termination of the Settlement Agreement, all monies remaining in a Depositor's account or in a Curing Account established by a Depositor, including any accrued earnings, shall be returned to the Depositor within thirty (30) days from December 31, 1991, or from the date the Depositor Cities and the United States jointly notify the Trustee, in writing, of the termination of the Settlement Agreement, whichever first occurs. When the Fund has been so distributed, the Trustee shall be released and discharged from all further accountability or liability respecting the Fund and shall not be responsible in any way to any person for the further disposition of the Fund. If monies remain in the Depositors' accounts or in any Curing Accounts in the Fund after the required payment to the United States has been made, such monies shall be returned to the Depositors within thirty (30) days of the date of disbursement of monies to the United States.

ARTICLE NINE

MISCELLANEOUS

9.1 Governing Law; Construction. This Trust Agreement shall be administered, construed and enforced in accordance with the laws of the State of Arizona. Throughout this Trust Agreement certain defined terms, identified by capitalization, are used. Such terms

shall have the meanings described to them by this Trust Agreement and the Settlement Agreement. When the context permits, words used in the singular in this Trust Agreement shall include the plural and the plural shall include the singular. Headings and sub-headings in this Trust Agreement are for reference only and are not to be considered in the construction of this Trust Agreement. If any provision of this Trust Agreement is determined to be for any reason invalid or unenforceable, then, at the option of the Depositor Cities and the Trustee, the invalid or unenforceable provisions shall be deemed stricken and the remaining provisions of this Trust Agreement shall continue in full force and effect.

9.2 Cancellation and Arbitration. This Agreement is subject to arbitration to the extent required by Section 12-1518, Arizona Revised Statutes, as it may be amended from time to time, and the cancellation requirements of Section 38-511, Arizona Revised Statutes, as it may be amended from time to time; provided that in the event of cancellation as provided herein, all monies remaining in the fund shall be returned to the Depositors by the Trustee on the effective date of cancellation.

9.3 Record Keeping. This Agreement is subject to retention of books and record-keeping to the extent required by Section 35-214, Arizona Revised Statutes.

IN WITNESS WHEREOF, the parties hereto have caused this TRUST AGREEMENT FOR THE SRPMIC WATER RIGHTS SETTLEMENT TRUST FUND to be

. . .

. . .

executed by their duly authorized representatives on the date first above written.

TRUSTEE:

STATE OF ARIZONA

By _____
State Treasurer

DEPOSITORS:

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
ACTING City Attorney

CITY OF PHOENIX, a Municipal corporation MARVIN A. ANDREWS, City Manager

By _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CITY OF SCOTTSDALE

By _____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CITY OF GLENDALE

By _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF MESA

By
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF TEMPE

By
Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

TOWN OF GILBERT

By
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM

City Attorney

CITY OF CHANDLER

By
Mayor

EXHIBIT A

Depositors' Resolutions

ORDINANCE NO. S18822

AN ORDINANCE OF THE COUNCIL OF THE CITY OF PHOENIX, ARIZONA, AUTHORIZING THE CITY MANAGER TO ENTER INTO, EXECUTE, DELIVER AND PERFORM AN AGREEMENT BETWEEN THE UNITED STATES, STATE OF ARIZONA, THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY (SRPMIC), THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD), THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT AND THE SALT RIVER VALLEY WATER USERS ASSOCIATION (SRP), THE ROOSEVELT WATER CONSERVATION DISTRICT (RWCD), THE ROOSEVELT IRRIGATION DISTRICT (RID) AND THE ARIZONA CITIES OF CHANDLER, GLENDALE, MESA, PHOENIX, SCOTTSDALE, TEMPE AND THE ARIZONA TOWN OF GILBERT PERTAINING TO THE SETTLEMENT OF WATER RIGHTS OF THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY AND ITS MEMBERS AND TO RESOLVE PENDING LITIGATION ON WATER RIGHTS; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO, EXECUTE AND PERFORM ALL DOCUMENTS RELATED THERETO INCLUDING BUT NOT LIMITED TO A COLORADO RIVER WATER EXCHANGE AGREEMENT BETWEEN THE UNITED STATES, CAWCD AND THE CITY OF PHOENIX, A WATER EXCHANGE AGREEMENT BETWEEN RID, CITY OF PHOENIX, SRPMIC AND SRP, A PROJECT WATER LEASE AGREEMENT BETWEEN THE UNITED STATES, THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY AND THE CITY OF PHOENIX; AN ASSIGNMENT AGREEMENT BETWEEN THE UNITED STATES, CAWCD, RWCD, CHANDLER, GLENDALE, SCOTTSDALE, TEMPE, MESA, PHOENIX AND TOWN OF GILBERT, A TRUST AGREEMENT BETWEEN PHOENIX, SCOTTSDALE, GLENDALE, MESA, TEMPE, CHANDLER, TOWN OF GILBERT AND THE STATE OF ARIZONA AND A CURING AGREEMENT BETWEEN CHANDLER, GLENDALE, SCOTTSDALE, TEMPE, MESA, PHOENIX AND THE TOWN OF GILBERT; AUTHORIZING THE CITY ATTORNEY TO EXECUTE A STIPULATION IN THE GENERAL ADJUDICATION OF THE GILA RIVER SYSTEM; AUTHORIZING THE CITY CONTROLLER TO DISBURSE ALL NECESSARY FUNDS AS PROVIDED BY THE

TERMS OF SAID SETTLEMENT AGREEMENT AND DOCUMENTS RELATED THERETO; AUTHORIZING THE MAYOR OF THE CITY OF PHOENIX TO AFFIX HIS SIGNATURE TO THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT; PROVIDING FOR THE AMENDMENT OF ORDINANCE NO. S-17523, AND DECLARING AN EMERGENCY.

WHEREAS, the continued development of the City of Phoenix, being dependent upon reliable allocation of Arizona's water resources, has been threatened by the assertion by substantial water rights claims by the Salt River Pima-Maricopa Indian Community which are the subject of pending litigation in the Arizona State and Federal Courts; and

WHEREAS, the City of Phoenix recognizes that the resolution of these conflicts must recognize long standing vested water rights arising under State law, Federal Law, the Kent Decree and through contractual relationships with the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District and the United States. The City of Phoenix also desires that the settlement of pending water rights claims accommodate the imperative need of the City of Phoenix to satisfy increasing municipal and industrial water demands; and

WHEREAS, it is a reasonable expectation of the City of Phoenix that the Salt River Pima-Maricopa Indian Community

Water Rights Settlement Agreement authorized herein will permanently settle the water rights of the Salt River Pima-Maricopa Indian Community, its members, and the owners of allotted lands within the Salt River Pima-Maricopa Indian Community's reservation and finally resolve pending litigation on water rights and damage claims.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. That the City Manager or his designee be, and is hereby, authorized to enter into, execute and perform the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement between the United States of America, the State of Arizona, the Salt River Pima-Maricopa Indian Community hereinafter referred to as "SRPMIC", the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association hereinafter collectively referred to as "SRP", the Roosevelt Water Conservation District hereinafter referred to as "RWCD", the Roosevelt Irrigation District hereinafter referred to as RID, the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District hereinafter referred to as "CAWCD". The SRPMIC Water Rights Settlement Agreement will be substantially in the respective proposed

form attached hereto with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City and such approval, shall constitute conclusive evidence of the approval and execution on behalf of the City of Phoenix, and of this Council's approval of any departures thereto from the respective form hereto attached.

SECTION 2. That the City Manager or his designee be, and is hereby, authorized to enter into, execute and perform the River Water Exchange Contract which is an agreement among the United States of America, CAWCD and the City of Phoenix providing for the delivery of 5,000 acre feet of Colorado River water per year through the Central Arizona Project facilities to the City of Phoenix for the purposes of facilitating an exchange of water with the SRPMIC. The River Water Exchange Contract will be substantially in the respective proposed form hereto attached with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City, and such approval, shall constitute conclusive evidence of the approval and execution on behalf of the City and of this Council's approval of any departure thereof from the respective form attached hereto.

SECTION 3. That the City Manager or his designee be, and he is hereby authorized to enter into, execute and perform an agreement between the City of Phoenix, RID, SRP and SRPMIC providing for the reuse of reclaim effluent and a three way exchange of water to their mutual benefit hereinafter referred to as "RID, City of Phoenix, SRPMIC, and SRP Water Exchange Agreement." The RID, City of Phoenix, SRPMIC and SRP Water Exchange Agreement will be substantially in the respective proposed form hereto attached with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City and such approval shall constitute conclusive evidence of the approval and execution on behalf of the City, and of this Council's approval of any departures thereof from the respective form hereto attached.

SECTION 4. That the City Manager or his designee be and he is hereby authorized to enter into, execute and perform a Project Water Lease Agreement between the United States of America, the SRPMIC and the City of Phoenix providing for the lease to the City of Phoenix of SRPMIC's right, title and interest under their CAP Delivery Contract to 3,023 acre feet of Project Water hereinafter referred to as "Project Water Lease Agreement." The Project Water Lease Agreement will be substantially in the respective proposed form attached hereto

with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City and such approval, shall constitute conclusive evidence of the approval and the execution on behalf of the City of Phoenix, and this Council's approval of any departures thereof from the respective form hereto attached.

SECTION 5. That the City Manager or his designee be and he is hereby authorized to enter into, execute and perform an Assignment Agreement between the United States, CAWCD, RWCD, Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix and the Town of Gilbert providing for the assignment by RWCD to the Cities and Town participating in the SRPMIC Water Rights Settlement Agreement of a portion of the agricultural water available to RWCD from the CAP, and further providing for the Secretary of the Interior, in certain events, to make available to such Cities and Town a portion of the agricultural water supply otherwise available from the CAP, such Assignment Agreement hereinafter referred to as "RWCD Assignment to Cities". The RWCD Assignment to Cities will be substantially in the respective proposed form attached hereto with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City and such approval, shall constitute conclusive evidence of the approval and the execution on behalf of the

City of Phoenix, and this Council's approval of any departures thereof from the respective form hereto attached.

SECTION 6. That the City Manager or his designee be and he is hereby authorized to enter into, execute and perform a Trust Agreement between the Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe and Chandler and the Town of Gilbert and the State Treasurer of the State of Arizona, providing for the establishment of an escrow account to be held in trust for the purposes outlined in the SRPMIC Water Rights Settlement Agreement and River Water Exchange Contract, hereinafter referred to as "Trust Agreement". The Trust Agreement will be substantially in the respective proposed form attached hereto with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City and such approval, shall constitute conclusive evidence of the approval and the execution on behalf of the City of Phoenix, and this Council's approval of any departures thereof from the respective form hereto attached.

SECTION 7. That the City Manager or his designee be and he is hereby authorized to enter into, execute and perform a Curing Agreement between the Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix and the Town of Gilbert providing for a procedure for the voluntary curing of any City's default under the SRPMIC Water Rights Settlement

Agreement of its obligation to make payments into the escrow described in such Settlement Agreement or such City's obligation to make lease payments as providing in such Settlement Agreement. The Curing Agreement will be substantially in the respective proposed form attached hereto with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution on behalf of the City and such approval, shall constitute conclusive evidence of the approval and the execution on behalf of the City of Phoenix, and this Council's approval of any departures thereof from the respective form hereto attached.

SECTION 8. That the City Attorney or his designee be and he is hereby authorized to execute a Stipulation in the General Adjudication of all Rights to use water in the Gila River System and Source, W-1; W-2; W-3; W-4, the objective of which is to resolve all outstanding water-related litigation and settle once and for always the water rights of the SRPMIC, and its members, and the owners of allotted lands with the Salt River-Maricopa Indian Reservation. The Stipulation will be substantially in the respective proposed form attached hereto with such additions, deletions and modifications as shall be approved by the City Attorney, and upon execution by the City Attorney on behalf of the City shall constitute conclusive evidence of the approval and the execution on

behalf of the City of Phoenix, and this Council's approval of any departures thereof from the respective form hereto attached.

SECTION 9. The City Manager or his designee, or the City Attorney or his designee as appropriate, be and they are hereby authorized to enter into, execute and perform on behalf of the City such additional agreements, exhibits, and stipulations, as are deemed by the City Manager to be necessary and appropriate in order to implement and effectuate the SRPMIC Water Rights Settlement Agreement, the River Water Exchange Contract, the RID, City of Phoenix, SRPMIC and SRP Water Exchange Agreement, the Project Water Lease Agreement, the RWCD Assignment to Cities, the Trust Agreement, the Curing Agreement and the Stipulation.

SECTION 10. The City Comptroller be and he is hereby authorized to disburse all necessary funds as provided by the terms of the SRPMIC Water Rights Settlement Agreement, the River Water Exchange Contract, the RID, City of Phoenix, SRPMIC and SRP Water Exchange Agreement, the Project Water Lease Agreement, the RWCD Assignment to Cities, the Trust Agreement, the Curing Agreement and the Stipulation and such additional agreements, exhibits and stipulations as are deemed by the City Manager necessary and appropriate to implement and effectuate such agreements.

SECTION 11. That the Mayor of the City of Phoenix be and he is authorized to affix his signature to the SRPMIC Water Rights Settlement Agreement.

SECTION 12. That Ordinance No. S-17523 passed by the City Council on December 22, 1987, pertaining to the authorization to execute the SRPMIC Water Rights Settlement Agreements and Exhibits attached thereto be and the same is hereby amended to conform to the provisions of this Ordinance.

SECTION 13. WHEREAS, the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health and safety, an EMERGENCY is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage by the Council as required by the City Charter and is hereby exempted from the referendum clause of said Charter.

PASSED by the Council of the City of Phoenix this 27 day of SEPTEMBER, 1989.

MAYOR

ATTEST:

Vicky Mac City Clerk

APPROVED AS TO FORM:

ACTING
City Attorney

REVIEWED BY:

ASSISTANT
City Manager

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

SPECIAL DEPUTY

I, ANGIE CASTRO, City Clerk of the City of Phoenix, County of Maricopa, State of Arizona, do hereby certify and attest the foregoing to be a full, true and correct copy of ~~Resolution~~ Ordinance No. S-18822 of the City of Phoenix, Arizona, as adopted by the City Council of the City of Phoenix at a ~~Special~~ Regular Meeting held on the 27 day of Sept, 19 89, all as appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Phoenix to be affixed hereunto this 10th day of Oct, 19 89

Angie Castro
SPECIAL DEPUTY City Clerk

qky

JWS:cz;0033D
9/27/89;10

Scottsdale City Council
Herbert R. Drinkwater, Mayor
Susan Bitter Smith
Sam Kathryn Campana
Ross Dean
Myron R. Deibel
Bill Soderquist
Bill Walton

Mark G. Mazzie
City Clerk

City Clerk's Office

"Your Source For Voter Information and Public Records"

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

I, Nancy L. Richards, Deputy City Clerk of the City of Scottsdale, County of Maricopa, State of Arizona, do hereby certify and attest the foregoing to be a full, true and correct copy of Resolution No. 3116 of the City of Scottsdale, Arizona as adopted by the City Council of the City of Scottsdale at a Regular meeting held on the 19th day of December, 1988.

IN WITNESS WHEREOF, I have hereto set my hand and caused the official seal of the City of Scottsdale to a be affixed hereunto this 18th day of September, 1989.

Nancy L. Richards
Deputy City Clerk

3939 CIVIC CENTER BOULEVARD, SCOTTSDALE, ARIZONA 85251-4468
PHONE (602) 994-2412

RESOLUTION NO. 3116

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO ENTER INTO, EXECUTE, DELIVER AND PERFORM THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT AMONG THE UNITED STATES OF AMERICA, THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, SALT RIVER VALLEY WATER USERS ASSOCIATION, SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, ROOSEVELT WATER CONSERVATION DISTRICT, THE ARIZONA CITIES OF PHOENIX, SCOTTSDALE, GLENDALE, MESA, TEMPE, CHANDLER, AND THE TOWN OF GILBERT, IN SETTLEMENT OF PENDING LITIGATION.

WHEREAS, the statutes of the State of Arizona authorize two or more public agencies to enter into agreement for services or to jointly exercise common powers; and

WHEREAS, the Charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements; and

WHEREAS, the City of Scottsdale is a defendant in the following lawsuits:

1. Salt River Pima-Maricopa Indian Community v. United States, et al., CIV 82-745 PHX RGS, United States District Court for the District of Arizona; and

2. Salt River Pima-Maricopa Indian Community v. H.S. Aguilar, et al., CIV 82-2162 PHX PGR, United States District Court for the District of Arizona; and

3. United States of America on Behalf of Salt River Pima-Maricopa Indian Community v. City of Phoenix, et al., CIV 82-2173 PHX WPC, United States District Court for the District of Arizona;

WHEREAS, the City of Scottsdale is a water rights claimant in the General Adjudication of All Rights to Use Water in the Gila River System and Source, W-1; W-2; W-3; W-4, wherein the Salt River Pima-Maricopa Indian Community (SRPMIC) has made substantial claims of rights to water; and

WHEREAS, the City, along with the above-named parties, recognizes that continued development of the Salt River Valley, being dependent upon reliable allocation of Arizona's water resources, has been jeopardized by the assertion of substantial water right and damage claims by SRPMIC, but also recognizes that any settlement of these conflicts must recognize long-standing vested water rights and accommodate the need of cities to satisfy increasing water demands; and

WHEREAS, the above-named parties desire to settle and quantify the water rights claims of the SRPMIC, to avoid further litigation, and to confirm certain other rights of the parties in accordance

with the terms of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement (the "Agreement"); and

WHEREAS, under the terms of the Agreement, SRPMIC will dismiss the three lawsuits identified as numbers 1-3 above and will stipulate that the Agreement fully satisfies and quantifies its claims in the Gila River Adjudication litigation; and

WHEREAS, the Agreement supercedes Intergovernmental Agreement No. 870353 approved by the Scottsdale City Council on November 30, 1987; and

WHEREAS, the parties desire to execute the Agreement and obtain the signature of the Secretary of Interior prior to the change in administration at the federal level so as to avoid any delays in federal approval or implementation of the Agreement, it is necessary that this Resolution be adopted as an emergency measure.

NOW THEREFORE, LET IT BE RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. That the Mayor, or his designee, is hereby authorized to enter into, execute and perform the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement between the United States of America, the Central Arizona Water Conservation District, the Salt River Pima-Maricopa Indian Community, the Salt River Water Users Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Arizona cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, Chandler and Town of Gilbert. The Agreement will be substantially in the proposed form hereto attached with such additions, deletions and modifications as shall be approved by the City Attorney. Execution by the Mayor on behalf of the City and approval by the City Attorney shall constitute conclusive evidence of the approval and the execution on behalf of the City and of this Council's approval of any departures from the form attached.

Section 2. All elected officials, officers and agents of the City are authorized and empowered within the scope of their powers granted by charter and law to perform the Agreement.

Section 3. The Mayor or his designee is hereby authorized to enter into, execute and perform on behalf of the City such additional agreements, exhibits, or other documents as are necessary and appropriate in order to implement and effectuate the Agreement.

Section 4. The immediate operation of the provisions of this Resolution is necessary in order to assure speedy execution of the Agreement by the United States and prompt implementation of the Agreement. There is, therefore, declared to exist an emergency, and the provisions of this Resolution shall become effective upon its passage and adoption by the City Council as provided in the charter of the City.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona, this 19th day of December, 1988.

ATTEST:

Richard A. Bowers
City Clerk

By: _____
Deputy City Clerk

CITY OF SCOTTSDALE
A Municipal Corporation

By: _____
Herbert R. Drinkwater
Mayor

Approved as to form:

_____
Thomas J. Wilson
City Attorney

RESOLUTION NO. 2531 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT; AND AUTHORIZING DEPOSIT OF MONIES IN SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY CITY EXCHANGE TRUST FUND.

WHEREAS, Section 7(d) of Public Law 100-512; Section 12.14 of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement ("the SRP-MIC Agreement") dated as of February 1988; and Exhibit 12.14 of the SRP-MIC Agreement entitled "Trust Agreement" provide for the establishment of an escrow account for deposit of monies for the purchase of rights to 22,000 acre feet of annual consumptive use of water from the mainstream of the Colorado River pursuant to Exhibit 3(h) of the SRP-MIC Agreement entitled "River Water Exchange Contract"; and

WHEREAS, the Trust Agreement provides for the State Treasurer to be the Trustee for such escrow account; and

WHEREAS, the City of Glendale desires to utilize the State Treasurer's services as Trustee.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the Mayor and City Clerk are hereby authorized and directed to execute and deliver the SRP-MIC Agreement along with all exhibits and any and all necessary documents on behalf of the City of Glendale.

SECTION 2. That the City Council of the City of Glendale does hereby authorize the deposit of monies in the Salt River Pima-Maricopa Indian Community City Exchange Trust Fund to be administered by the State Treasurer as Trustee, in accordance with the Trust Agreement.

SECTION 3. That the following officers/agents or their successors in office be authorized to order the deposit of monies in the Salt River Pima-Maricopa Indian Community City Exchange Trust Fund:

Gordon L. Pedrow	Asst. City Manager
(Name)	(Title)
Kenneth E. Martin	City Treasurer
(Name)	(Title)
Lavergne Behm	City Clerk
(Name)	(Title)
Linda Duke	Asst. City Clerk
(Name)	(Title)

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 17th day of October, 1989.

GEORGE R. RENNER
M A Y O R

ATTEST:

LAVERGNE BEHM
City Clerk (SEAL)

APPROVED AS TO FORM:

PETER VAN HAREN
City Attorney

REVIEWED BY:

MARTIN VANACOUR
City Manager

STATE OF ARIZONA)
County of Maricopa) ss.
City of Glendale)

I, the undersigned, Lavergne Behm, being the duly appointed, qualified and acting City Clerk of the City of Glendale, Maricopa County, Arizona, certify that the foregoing Resolution No. 2531 New Series, is a true, correct and accurate copy of Resolution No. 2531 New Series, passed and adopted at a special meeting of the Council of the City of Glendale, held on the 17th day of October, 1989, at which a quorum was present and voted in favor of said Resolution.

Given under my hand and seal this 17th day of October, 1989.

(SEAL)

Lavergne Behm
City Clerk

CITY OF MESA

Certificate of CITY CLERK

I, SHARON EGGERS, THE DULY APPOINTED, QUALIFIED AND ACTING CITY CLERK OF THE **CITY OF MESA**, MARICOPA COUNTY, ARIZONA, DO HEREBY CERTIFY THAT THE ATTACHED COPY OF RESOLUTION NO. 5933, ENTITLED:

RESOLUTION NO. 5933

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT WITH THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

IS A TRUE, CORRECT AND COMPARED COPY OF THE ORIGINAL OF RECORD, AND ON FILE IN THE OFFICE OF THE CITY CLERK OF THE **CITY OF MESA**, ARIZONA.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF THE **CITY OF MESA**, MARICOPA COUNTY, STATE OF ARIZONA, THIS 17TH DAY OF OCTOBER, 1989.

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ.

SHARON EGGERS
CITY CLERK

RESOLUTION NO. 5933

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT WITH THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1: That the Settlement Agreement among the City of Mesa, the Salt River Pima-Maricopa Indian Community, the Roosevelt Water Conservation District, the United States of America, the State of Arizona, the Salt River Project Agricultural Improvement and Power District and other state and local agencies is hereby approved.

Section 2: That the City Manager is authorized and directed to execute the Agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 7th day of December, 1987.

APPROVED:

Mayor

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ.

ATTEST:

City Clerk

Resolution 89.73

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA APPROVING THE SALT RIVER PIMA - MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT AMONG THE UNITED STATES OF AMERICA, THE STATE OF ARIZONA, THE SALT RIVER PIMA - MARICOPA INDIAN COMMUNITY, THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, THE SALT RIVER VALLEY WATER USERS' ASSOCIATION, THE ROOSEVELT WATER CONSERVATION DISTRICT, THE ROOSEVELT IRRIGATION DISTRICT, THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, THE TOWN OF GILBERT AND THE CITIES OF CHANDLER, GLENDALE, MESA, PHOENIX, SCOTTSDALE AND TEMPE.

WHEREAS, the continued development and economic well-being of the City of Tempe is dependent on a reliable and sufficient water supply; and,

WHEREAS, the City of Tempe's rights to the water from the Salt River have been jeopardized by the assertion of substantial water rights claims by the Salt River Pima - Maricopa Indian Community; and,

WHEREAS, the representatives of the United States of America, the State of Arizona, the Salt River Pima - Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Central Arizona Water Conservation District, the Town of Gilbert and the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe have agreed to permanently settle the water rights of the Salt River Pima - Maricopa Indian Community and its members, to finally resolve pending litigation on water rights and damage claims and to seek funding for implementation of the settlement; and,

WHEREAS, the proposed settlement recognizes the City of Tempe's long-standing vested water rights and will not harm the City of Tempe's ability to satisfy increasing water demands;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tempe, Arizona does hereby approve the Salt River Pima - Maricopa Indian Community Water Rights Settlement Agreement and all pertinent stipulations and subsidiary agreements thereto.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 14th day of September, 1989.

Approved:

Harry E. Mitchell
Mayor

Attest:

Helen R. Fowler
City Clerk

Approved as to Form:

David R. Merkel
City Attorney

I, Helen R. Fowler, the duly appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the attached to be true and exact copy of Resolution No. 89.73, passed and adopted at the Regular Council Meeting of September 14, 1989, by the Tempe City Council, Tempe, Arizona.

DATED this 27th day of September, 1989.

Helen R. Fowler, CMC
City Clerk

Res. 89.73

Tribune Mesa • Tempe • Chandler NEWSPAPERS

P.O. BOX 1547 • MESA, ARIZONA 85211

RECEIVED
SEP 25 1989
CITY CLERK

P. O. Number: _____

Invoice Number: 989223

AFFIDAVIT OF PUBLICATION

STATE OF ARIZONA
County of Maricopa

I, SUE GREEN, Legal Clerk,

acknowledge that the attached hereto was published in a newspaper of general circulation at Mesa, Arizona, County of Maricopa on the following dates:

09/20 1989

T

M—Mesa T—Tempe C—Chandler

Sue Green

LEGAL CLERK

Subscribed and sworn to before me this date: 20-SEP-89

Cathy Jackson

NOTARY PUBLIC

OFFICIAL SEAL
CATHY JACKSON
Notary Public - Arizona
MARICOPA COUNTY
My Comm. Expires Mar. 5, 1993

CITY OF TEMPE
RESOLUTION NO. 89.73

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING THE SALT RIVER PIMA - MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT AMONG THE UNITED STATES OF AMERICA, THE STATE OF ARIZONA, THE SALT RIVER PIMA - MARICOPA INDIAN COMMUNITY, THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, THE SALT RIVER VALLEY WATER USERS' ASSOCIATION, THE ROOSEVELT WATER CONSERVATION DISTRICT, THE ROOSEVELT IRRIGATION DISTRICT, THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, THE TOWN OF GILBERT AND THE CITIES OF CHANDLER, GLENDALE, MESA, PHOENIX, SCOTTSDALE AND TEMPE.

WHEREAS, the continued development and economic well-being of the City of Tempe is dependent on a reliable and sufficient water supply; and

WHEREAS, the City of Tempe's rights to the water from the Salt River have been jeopardized by the assertion of substantial water rights claims by the Salt River Pima - Maricopa Indian Community; and,

WHEREAS, the representatives of the United States of America, the State of Arizona, the Salt River Pima - Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Central Arizona Water Conservation District, the Town of Gilbert and the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe have agreed to permanently settle the water rights of the Salt River Pima - Maricopa Indian Community and its members, to finally resolve pending litigation on water rights and damage claims and to seek funding for implementation of the settlement; and,

WHEREAS, the proposed settlement recognizes the City of Tempe's long-standing vested water rights and will not harm the City of Tempe's ability to satisfy increasing water demands;

27.21

I, Helen R. Fowler, the City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the attached to be a true and exact copy of Resolution No. 89.74 adopted at the Tempe City Council Meeting of September 14, 1989, City of Tempe, Maricopa County, Arizona.

DATED this 20th day of September, 1989

Helen R. Fowler

Helen R. Fowler, CMC
City Clerk

Resolution 89.74

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA APPROVING THE ESTABLISHMENT OF THE SALT RIVER PIMA - MARICOPA INDIAN COMMUNITY CITY EXCHANGE TRUST FUND.

WHEREAS, the City Council of the City of Tempe has approved the Salt River Pima - Maricopa Indian Community Water Rights Settlement Agreement; and,

WHEREAS, the Settlement Agreement requires the City of Tempe to cede one hundred acre-feet per year of its Salt River water allotment to the Indian Community; and,

WHEREAS, the United States of America has agreed to acquire a sufficient amount of Colorado River water to replace the Salt River water the City of Tempe will cede to the Indian Community; and,

WHEREAS, the City of Tempe has agreed to fund $40,500 of the cost of acquiring the replacement Colorado River water; and,

WHEREAS, the Settlement Agreement provides for the establishment of an escrow account to be known as the SRPMIC City Exchange Trust Fund to be used to carry out the River Water Exchange; and,

WHEREAS, the State Treasurer of Arizona has agreed to hold, administer and invest the Trust Fund in accordance with the provisions of the trust agreement;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA,

that the TRUST AGREEMENT FOR THE SALT RIVER PIMA - MARICOPA INDIAN COMMUNITY TRUST FUND is approved and a deposit of $40,500 is to the fund is authorized to be made prior to October 20, 1989.

Passed and adopted by the City Council of the City of Tempe, Arizona this 14th day of September, 1989.

Harry E. Mitchell
Mayor

Attest:

Helen R. Fowler
City Clerk

Approved as to Form:

David R. Merkel
City Attorney

Resolution 89.75

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA APPROVING THE CURING AGREEMENT AMONG THE CITIES OF CHANDLER, GLENDALE, MESA, PHOENIX, SCOTTSDALE, TEMPE AND THE TOWN OF GILBERT.

WHEREAS, the cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, Tempe and the town of Gilbert (cities) have agreed to execute the Salt River Pima - Maricopa Indian Community Water Rights Settlement Agreement; and,

WHEREAS, the Settlement Agreement requires the cities to deposit certain sums into an escrow account for the acquisition of water rights for the River Water Exchange; and,

WHEREAS, the Settlement Agreement gives each of the cities the right to lease a portion of the Salt River Pima - Maricopa Indian Community's Central Arizona Project water allocation; and,

WHEREAS, a procedure should be provided for the voluntary curing of any city's default of its obligation to make payments into the escrow account or its obligation to make the lease payments described above;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA,

the CURING AGREEMENT AMONG THE CITIES OF CHANDLER, GLENDALE, SCOTTSDALE, TEMPE, MESA, PHOENIX AND THE TOWN OF GILBERT which is ancillary to the Salt - River Pima - Maricopa Indian Community Water Rights Settlement is approved.

Passed and adopted by the City Council of the City of Tempe, Arizona this 14th day of September, 1989.

Harry E. Mitchell
Mayor

Attest:

Helen R. Fowler
City Clerk

Approved as to Form:

David R. Merkel
City Attorney

I, Helen R. Fowler, the duly appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the attached to be a true and exact copy of Resolution No. 89.75, passed and adopted at the Regular Council Meeting of September 14, 1989, by the Tempe City Council, Tempe, Arizona.

DATED this 27th day of September, 1989.

Helen R. Fowler, CMC
City Clerk

Res. 89.75

Mesa • Tempe • Chandler
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P.O. BOX 1547 • MESA, ARIZONA 85211

RECEIVED
SEP 25 1989
CITY CLERK

P. O. Number: _____
Invoice Number: 989229

AFFIDAVIT OF PUBLICATION

STATE OF ARIZONA
County of Maricopa

I, SUE GREEN, Legal Clerk,
acknowledge that the attached hereto was published in a newspaper of general circulation at Mesa, Arizona, County of Maricopa on the following dates:

09/20 1989

T
M—Mesa T—Tempe C—Chandler

Sue Green
LEGAL CLERK

Subscribed and sworn to before me this
date: 20-SEP-89

Cathy Jackson
NOTARY PUBLIC

OFFICIAL SEAL
CATHY JACKSON
Notary Public - Arizona
MARICOPA COUNTY
My Comm. Expires Mar. 5, 1993

CITY OF TEMPE
RESOLUTION NO. 89.75
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA APPROVING THE CURING AGREEMENT AMONG THE CITIES OF CHANDLER, GLENDALE, MESA, PHOENIX, SCOTTSDAEL, TEMPE AND THE TOWN OF GILBERT.
WHEREAS, the cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, Tempe and the town of Gilbert (cities) have agreed to execute the Salt River Pima - Maricopa Indian Community Water Rights Settlement Agreement; and,
WHEREAS, the Settlement Agreement requires the cities to deposit certain sums into an escrow account for the acquisition of water rights for the River Water Exchange; and,
WHEREAS, the Settlement Agreement gives each of the cities the right to lease a portion of the Salt River Pima - Maricopa Indian Community's Central Arizona Project water allocation; and,
WHEREAS, a procedure should be provided for the voluntary curing of any city's default of its obligation to make payments into the escrow account or its obligation to make the lease payments described above;
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA,
the CURING AGREEMENT AMONG THE CITIES OF CHANDLER, GLENDALE, SCOTTSDALE, TEMPE, MESA, PHOENIX AND THE TOWN OF GILBERT which is ancillary to the Salt - River Pima - Maricopa Indian Community Water Rights Settlement is approved.
Passed and adopted by the City Council of the City of Tempe, Arizona this 14th day of September, 1989.
s/Harry E. Mitchell
Mayor
Attest:
s/Helen R. Fowler
City Clerk
Approved as to form:
s/David R. Merkel
City Attorney
Pub Sept 20, 1989 T-989229

18.66

This is certified to be a true and correct copy of the original document

Town Clerk

Date

RESOLUTION NO. 1046

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE THAT CERTAIN AGREEMENT ENTITLED THE "SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THAT CERTAIN AGREEMENT ENTITLED THE "CURING AGREEMENT AMONG THE CITIES OF CHANDLER, GLENDALE, SCOTTSDALE, TEMPE, MESA, PHOENIX AND THE TOWN OF GILBERT"; AUTHORIZING THE DISBURSEMENT OF FUNDS PURSUANT TO THAT CERTAIN DOCUMENT ENTITLED THE "TRUST AGREEMENT"; AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Gilbert, the City of Chandler, the City of Tempe, the City of Mesa, the City of Glendale, the City of Scottsdale, the City of Phoenix, the Roosevelt Irrigation District, the Roosevelt Water Conservation District, the Salt River Project Agricultural Improvement & Power District, the Salt River Valley Water Users' Association, the Salt River Pima-Maricopa Indian Community, the Central Arizona Water Conservation District, the State of Arizona, and the United States of America, have reached agreement to resolve certain claims made by the Salt River Pima-Maricopa Indian Community and its members as well as other non-Indian claims, which are the subject of extensive and complex litigation pending in Arizona state and federal courts; and

WHEREAS, the Common Council of the Town of Gilbert, Arizona, finds that the execution of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement, together with all its exhibits, including, but not limited to, the related Curing Agreement among the Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix, and the Town of Gilbert, is in the best interest of the Town in securing for the Town a substantially more reliable allocation of Arizona's water resources;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the Town of Gilbert, that the Mayor be and hereby is authorized to execute that certain Agreement entitled the "Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement", together with the exhibits thereto (hereafter the "Settlement Agreement");

BE IT FURTHER RESOLVED, that the Mayor be and hereby is authorized to execute that certain document entitled the "Curing Agreement among the Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix, and the Town of Gilbert", to ensure that the Town of Gilbert may, at its discretion, cure the default of any of the above-listed Cities as necessary to avoid default of certain provisions under the Settlement Agreement;

CITY OF CHANDLER
Office of the City Clerk

C E R T I F I C A T I O N

I, Carolyn Dunn, the duly appointed and Acting City Clerk of the City of Chandler, Arizona, DO HEREBY CERTIFY that the attached Resolution No. 1621 dated December 3, 1987, "Appoving Water Rights Settlement With the Salt River Pima-Maricopa Indian Community" is a true and correct copy of the original document of record and on file in the office of the City Clerk.

Dated: September 26, 1989

Carolyn Dunn
CITY CLERK

S E A L

25 S. Arizona Place, Suite 302 * Chandler, Arizona 85225 * Phone: (602) 786-2231

City Clerk
Official File Copy

RESOLUTION NO. 1621

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING WATER RIGHTS SETTLEMENT AGREEMENT WITH THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY.

WHEREAS, the City of Chandler has been a party to negotiations among the Salt River Pima-Maricopa Indian Community (SRPMIC), the United States of America, the State of Arizona, the Salt River Project, the Roosevelt Irrigation District, the Roosevelt Water Conservation District, and the Cities of Glendale, Mesa, Phoenix, Scottsdale and Tempe, and the Town of Gilbert seeking to clarify the extent of water rights belonging to the SRPMIC; and,

WHEREAS, these negotiations have culminated in a proposed "Water Rights Settlement Agreement" resolving all outstanding water-related litigation and water right claims by providing to the SRPMIC 122,400 acre-feet of water sufficient to irrigate approximately 27,200 acres of SRPMIC land and sufficient funds to permit development of SRPMIC agricultural and commercial facilities and activities; and,

WHEREAS, the best interests of the City of Chandler will be served by entering into the proposed "Agreement";

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, as follows:

1. That the proposed "Water Rights Settlement Agreement" with the Salt River-Pima-Maricopa Indian Community is hereby approved; and

2. The Mayor is hereby authorized to execute said "Agreement".

APPROVED, PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this 3rd day of Dec., 1987.

MAYOR

ATTEST:

~~DEPUTY~~ CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

C-E-R-T-I-F-I-C-A-T-I-O-N

I HEREBY CERTIFY that the above and foregoing Resolution No. 1621 was duly approved, passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 3rd day of December, 1987, and that a quorum was present thereat.

Beverly Brady
Acting DEPUTY CITY CLERK

EXHIBIT B

Mailing Addresses
of
Parties to the Settlement Agreement

As to the United States of America	Secretary of the Interior Department of the Interior 18th and C Streets, N.W. Washington, D.C. 20240
	Area Director Phoenix Area Office Bureau of Indian Affairs Post Office Box 10 Phoenix, Arizona 85001
	Regional Director Bureau of Reclamation Lower Colorado Region Post Office Box 427 Boulder City, Nevada 89005
As to the State of Arizona:	Office of the Governor 1700 West Washington Phoenix, Arizona 85007
As to the Salt River Pima-Maricopa Indian Community:	Salt River Pima-Maricopa Indian Community Route 1, Box 216 Scottsdale, Arizona 85256 Attention: Community Manager
As to the Central Arizona Water Conservation District:	Central Arizona Water Conservation District 23636 North Seventh Street Phoenix, Arizona 85024 Attention: General Manager
As to the Salt River Project:	Salt River Project Post Office Box 52025 Phoenix, Arizona 85072-2025 Attention: General Manager
As to the Roosevelt Water Conservation District:	Roosevelt Water Conservation District Post Office Box 168 Higley, Arizona 85236 Attention: General Manager

As to the Roosevelt Irrigation District:	Roosevelt Irrigation District Post Office Box 95 Buckeye, Arizona 85236 Attention: Superintendent
As to the City of Phoenix:	City of Phoenix 251 West Washington Phoenix, Arizona 85003 Attention: City Manager
As to the City of Scottsdale	City of Scottsdale 3939 Civic Center Plaza Scottsdale, Arizona 85251 Attention: City Manager
As to the City of Glendale:	City of Glendale 5850 West Glendale Avenue Glendale, Arizona 85301 Attention: City Manager
As to the City of Mesa:	City of Mesa 55 North Center Street Post Office Box 1466 Mesa, Arizona 85201 Attention: City Manager
As to the City of Tempe:	City of Tempe 31 East 5th Street Tempe, Arizona 85281 Attention: City Manager
As to the City of Chandler:	City of Chandler Suite 304 25 South Arizona Place Chandler, Arizona 85225 Attention: City Manager
As to the Town of Gilbert:	Town of Gilbert 119 North Gilbert Road Gilbert, Arizona 85234 Attention: Town Manager

EXHIBIT C

Curing Agreement

CURING AGREEMENT AMONG THE CITIES OF CHANDLER, GLENDALE, SCOTTSDALE, TEMPE, MESA, PHOENIX AND THE TOWN OF GILBERT

PARTIES.

The Parties to this Agreement are the Arizona Cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix and the Arizona Town of Gilbert, Arizona municipal corporations, hereinafter collectively referred to as "Cities".

RECITALS.

1. The Parties hereto intend to execute or will execute simultaneously an agreement entitled "Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement" dated as of February, 1988 (hereinafter referred to as the "Settlement Agreement").

2. As provided in Paragraph 12.14 of the Settlement Agreement, each of the Parties to this Curing Agreement have agreed that within one year after the date of enactment of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, they are to deposit certain sums into an escrow account for the acquisition of water rights for the River Water Exchange described in Paragraph 12.0 of the Settlement Agreement.

3. As provided in Paragraph 19.0 of the Settlement Agreement, each of the Parties to this Curing Agreement have acquired the right to lease a portion of the Salt River Pima-Maricopa Indian Community's Central Arizona Project water allocation from the Community. In exercising this right, each City may elect one of three options in structuring its lease

payments. The options allow a City to make its entire payment up front or to make installment payments over a number of years.

4. The Parties hereto desire to provide a procedure for the voluntary curing of any City's default under the Settlement Agreement of its obligation to make payments into the escrow account described in Paragraph 2 above or its obligation to make lease payments described in Paragraph 3 above.

NOW, THEREFORE, IN CONSIDERATION of the respective rights, privileges, and obligations of the Parties hereafter set forth, it is agreed as follows:

1. Effective Date and Relationship to the Settlement Agreement.

1.1 This Curing Agreement shall be effective and binding upon the Parties that execute it when it has been executed by all Parties hereto and upon execution of the Settlement Agreement by all Parties thereto. Provided, however, this Curing Agreement is ancillary to the Settlement Agreement, and its Exhibits shall be construed where possible in harmony with the terms of the Settlement Agreement and its Exhibits; in the event of an irreconcilable difference between the terms of this Curing Agreement and the terms of the Settlement Agreement and its Exhibits, the terms of the Settlement Agreement and its Exhibits shall control.

1.2 The obligations to make payments referred to in this Agreement are governed by the Settlement Agreement. The purpose of this Curing Agreement is to define the rights of the

Cities in the event of a Default or prospective Default by a City of its obligations under the Settlement Agreement.

2. Definitions.

2.1 Except as otherwise provided in this Curing Agreement, the definitions set forth in the Settlement Agreement shall apply.

2.2 Cure shall mean to make payments of all or any portion of any payment (including any late charges and interest) due or to become due from any Defaulting City under Paragraphs 12.0 or 19.0 of the Settlement Agreement.

2.3 Curing City shall mean any Non-Defaulting City which elects to Cure.

2.4 Default shall mean the failure of a Party hereto to deposit monies into an escrow account described in Paragraph 12.0 of the Settlement Agreement or to make any lease payments required by Paragraph 19.0 of the Settlement Agreement. The date of the Default shall be the due date of the amount owed, as set forth in the Settlement Agreement and its Exhibits.

2.5 Defaulting City shall mean any Party in Default.

2.6 Non-Defaulting City shall mean any Party other than a Defaulting City.

3. Right to Cure - River Water Exchange.

3.1 Each City represents and agrees that it will make its respective payment required under Paragraph 12.0 of the Settlement Agreement. Each City represents and agrees that it will provide a statement to each other City from each respective

City's Chief Financial Officer that sufficient funds are available to meet its respective obligation under Paragraph 12.0 of the Settlement Agreement and that such funds have been restricted for this purpose. Such statement shall conform substantially to the terms contained in Exhibit 1 attached hereto and shall be delivered to those persons and in the manner provided in Paragraph 5 hereof no later than October 6, 1989.

3.2 In the event a Party reasonably anticipates it will default in making its payment into the escrow account pursuant to Paragraph 12.14 of the Settlement Agreement, and such Party cannot in good faith provide the statement required by Paragraph 3.1 hereof, such Party shall promptly give written notice, but in no event later than October 6, 1989, of such prospective Default to each of the Parties to this Curing Agreement.

3.3 Each Non-Defaulting City shall have the right to cure a prospective Default of a Defaulting City's obligations to make the payment into the escrow account required pursuant to Paragraph 12.14 of the Settlement Agreement. If more than one Non-Defaulting City wishes to cure a prospective Default of a Defaulting City, each Non-Defaulting City shall have a right to cure in accordance with the following formula:

Step 1. Determine the amount of prospective Default in dollars.

Step 2. Determine each Curing City's initial percentage as provided in Paragraph 12.14 of the Settlement Agreement.

Step 3. Determine the sum of all Curing Cities' initial percentages as provided in Paragraph 12.14 of the Settlement Agreement.

Step 4. Divide each Curing City's initial percentage by the sum of all Curing Cities' initial percentages.

Step 5. Multiply the amounts determined in Step 4 by 100 to determine each Curing City's percentage right to cure.

Step 6. Multiply the percentages determined in Step 5 by the dollar amount determined in Step 1.

3.4 A Non-Defaulting City who cures or partially cures a prospective Default shall succeed to the rights of the Defaulting City set forth in Paragraph 12.0 of the Settlement Agreement, to the extent of its contribution to the Cure, subject to the rights of a Defaulting City set forth in Paragraph 3.5.

3.5 Prior to the expiration of ten (10) days after the Default, the Defaulting City may reimburse the Curing City or Cities the amount paid by the Curing City or Cities and such payment shall restore such Defaulting City to the status of a Non-Defaulting City for purposes of this Curing Agreement. Failure of a Defaulting City to make such payment within ten (10) days shall extinguish the Defaulting City's rights in the River Water Exchange described in Paragraph 12.0 of the Settlement Agreement. A Defaulting City which makes payment as allowed by this paragraph shall also pay the Curing City or Cities an amount

equal to the Curing City or Cities' costs incurred in effecting and preparing to effect a Cure including legal costs, foregone interest, and cost of funds borrowed to make such payment.

3.6 A Defaulting City whose rights in the River Water Exchange have been extinguished pursuant to Paragraph 3.5 above hereby assigns to the Curing City or Cities its corresponding rights and obligations in the CAP Water Lease described in Paragraph 19.0 of the Settlement Agreement, it being the specific intent of the Parties hereto that upon default of the obligation to deposit monies in an escrow account for the River Water Exchange and subsequent Cure by another City, each Party's percent of participation in the CAP Water Lease described in Paragraph 19.0 of the Settlement Agreement be the same as each Party's percent of participation in the River Water Exchange described in Paragraph 12.0 of the Settlement Agreement. In the event any further documents are required, a Defaulting City shall execute any and all documents required to effectuate such assignment.

4. Right to Cure - Central Arizona Project Water Lease.

4.1 Each City represents and agrees that it will make its respective Central Arizona Project Water Lease payment or payments required under Paragraph 19.0 of the Settlement Agreement. Each City represents and agrees that it will provide a statement to each other City from each respective City's Chief Financial Officer stating (i) that City's election of payment schedule required by Paragraph 19.1 of the Settlement Agreement, (ii) that sufficient funds are available to make the payment due

on the enforceability date and that such funds have been restricted for this purpose; and such notice shall be given as soon as is practicable after the enforceability date has been determined, and (iii) for those Cities electing to pay annual installments pursuant to Paragraph 19.1, a statement shall issue annually, sixty (60) days before the due date of each installment payment, stating that sufficient funds are available to make such payment and have been restricted for the purpose of making such payment. Statements required to be issued by this Paragraph shall be delivered to those persons and in the manner provided in Paragraph 5 hereof.

4.2 In the event a Party reasonably anticipates it will default in making any CAP Water Lease payment pursuant to Paragraph 19.1 of the Settlement Agreement, and such Party cannot in good faith provide any of the Statements required by Paragraph 4.1 hereof, such Party shall promptly give written notice of such prospective Default to each of the Parties to this Curing Agreement no later than sixty (60) days prior to the date such payment is due.

4.3 Each Non-Defaulting City shall have the right to cure a prospective Default of a Defaulting City prior to an actual Default in making a Lease payment when due, in accordance with Paragraphs 4.3 and 4.4. If more than one Non-Defaulting City wishes to cure a prospective Default of a Defaulting City, each Non-Defaulting City shall have a right to cure in accordance with the following formula:

Step 1. Determine the amount of the prospective Default in dollars.

Step 2. Determine each Curing City's initial percentage as provided in Paragraph 19.6 of the Settlement Agreement.

Step 3. Determine the sum of all Curing Cities' initial percentages as provided in Paragraph 19.6 of the Settlement Agreement.

Step 4. Divide each Curing City's initial percentage by the sum of all Curing Cities' initial percentages.

Step 5. Multiply the amounts determined in Step 4 by 100 to determine each Curing City's percentage right to cure.

Step 6. Multiply the percentages determined in Step 5 by the dollar amount determined in Step 1.

4.4 A Non-Defaulting City who cures or partially cures a prospective Default shall succeed to the rights of the Defaulting City set forth in Paragraph 19.0 of the Settlement Agreement to the extent of its contribution to the Cure, subject to the rights of a Defaulting City set forth in Paragraph 4.5 hereof.

4.5 Nothing in Paragraphs 4.1, 4.2, 4.3 or 4.4 herein shall affect the rights of a Defaulting City, a Curing City or the Lessor in any Project Water Lease Agreement entered into pursuant to Paragraph 19.0 of the Settlement Agreement to declare a Default

or to cure a Default following receipt of a Notice of Default pursuant to Paragraph 4.5 of a Project Water Lease Agreement. The rights of a Defaulting City, a Curing City and the Lessor in a Project Water Lease Agreement upon Default shall be as set forth in Paragraph 4.2 of each City's respective Project Water Lease Agreement.

4.6 An extinguishment of the rights of a Defaulting City under Paragraph 19.0 of the Settlement Agreement pursuant to Paragraph 4.5 above shall not affect the Defaulting City's rights and obligations under the River Water Exchange described in Paragraph 12.0 of the Settlement Agreement.

5. Notices. All notices to be given under this Agreement shall be in writing and shall be deemed to have been duly given if hand-delivered to the Party or Parties to whom it is given or if mailed postage prepaid, certified mail, return receipt requested to the Party or Parties to whom notice is given at the following addresses:

City of Chandler
25 South Arizona Place
Chandler, Arizona 85225

ATTENTION: City Manager

City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

ATTENTION: City Manager

. . .

. . .

. . .

City of Scottsdale
3939 Civic Center Plaza
Scottsdale, Arizona 85251

ATTENTION: City Manager

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

ATTENTION: City Manager

City of Mesa
55 North Center Street
Post Office Box 1466
Mesa, Arizona 85201

ATTENTION: City Manager

City of Phoenix
251 West Washington Street
Phoenix, Arizona 85003

ATTENTION: City Manager

Town of Gilbert
119 North Gilbert Road
Gilbert, Arizona 85234

ATTENTION: Town Manager

Any Party may change the address to which notices are to be sent by notice in writing to the other Parties in accordance with this Paragraph.

6. Right of Action for Reimbursement. A City which elects to cure under Paragraph 3.3 or 4.3 of this Agreement may bring suit for reimbursement pursuant to this Paragraph. Upon making payment of all or any portion of any payment due from a Defaulting City, each Curing City shall have an immediate right of action in Arizona Superior Court to obtain reimbursement from the Defaulting City of the amount paid by the Curing City, plus interest on that amount from the date of payment by the Curing

City at the rate of twelve percent (12%) per annum, reasonable attorneys' fees, expert witness fees and cost of suit. In the event a Defaulting City is required by court order to reimburse a Curing City or Cities amounts paid by such Curing City or Cities, including interest and costs, as set forth herein, the Defaulting City shall, upon making such reimbursement, be restored to the status quo ante prior to the Default with respect to its rights and obligations affected by the Default.

7. Time is of the Essence. Time is of the essence under this Curing Agreement.

8. Modification and Waiver. No modification or amendment to this Curing Agreement shall be effective unless in writing and signed by the Parties hereto. No waiver shall be effective unless in writing and signed by the Party against whom enforcement of the waiver is sought.

9. Headings. The headings in this Curing Agreement have been inserted for convenience only and shall not affect the meaning or interpretation of any provisions of this Curing Agreement.

10. Governing Law. This Curing Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

11. Counterparts. This Curing Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument.

12. No Third Party Beneficiaries. Nothing in this Curing Agreement, express or implied, shall confer any rights or remedies under or by reason of this Curing Agreement on any persons or entities other than the Parties to it.

IN WITNESS WHEREOF, the Parties hereto have executed this Curing Agreement on the 20th day of October, 1989, this date being the date all Parties have executed this Agreement.

CITY OF CHANDLER

By _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CITY OF GLENDALE

By _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

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. . .

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. . .

CITY OF SCOTTSDALE

By _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CITY OF TEMPE

By _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CITY OF MESA

By _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

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. . .

City of Phoenix,
a Municipal Corporation
MARVIN A. ANDREWS,
City Manager

By _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
ACTING City Attorney

TOWN OF GILBERT

By _____

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

EXHIBIT 1

to the
CURING AGREEMENT
intentionally omitted

EXHIBIT "21.6"

Salt River Pima-Maricopa Indian
Community Water Rights Settlement Act of 1988

Public Law 100-512
100th Congress

An Act

To provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, and for other purposes.

Oct. 20, 1988
[H.R. 4102]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.
Public lands.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988".

SEC. 2. CONGRESSIONAL FINDINGS.

(a) The Congress finds and declares that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency largely depend on development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on June 14, 1879, the United States Government established a reservation for the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, at the confluence of the Salt and Verde Rivers tributary to the Gila River;

(5) the United States, as trustee for the Community, obtained water entitlements for the Community pursuant to the Kent Decree of 1910 and the Bartlett Dam Agreement of 1935; however, continued uncertainty as to the full extent of the Community's entitlement to water has severely limited the Community's access to the water and financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and economic self-sufficiency;

(6) litigation to determine the full extent and nature of the Community's water rights and those of its allotted land owners, and damages thereto, is currently pending before the United States District Court in Arizona and in the United States Claims Court. The United States, as trustee for the Community, also has filed claims for the Community's water rights in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa;

29-139 O - 88 (512)

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Community's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Community and neighboring non-Indian communities have sought to settle their disputes to water and reduce the burdens of litigation;

(8) after more than two years of negotiations, which included participation by representatives of the United States Government, the Community and neighboring non-Indian communities of the Salt River Valley, who all are party to the General Adjudication of the Gila River System and Source, the parties have entered into an agreement to resolve all water rights claims between and among themselves, to quantify the Community's entitlement to water, to provide for the orderly development of the Community's lands, and to prescribe a procedure for resolving such remaining claims which the Community and its allottees may have against the United States;

(9) pursuant to the agreement, the neighboring non-Indian communities will transfer rights to approximately thirty-two thousand acre-feet of surface water to the Community, provide for the means of firming existing water supplies of the Community, and make substantial additional contributions to carry out the agreement's provisions; and

(10) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Community, it is appropriate that the United States participate in the implementation of the agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Community to utilize fully its water entitlements in developing a diverse, efficient reservation economy.

(b) Therefore, it is the purpose of this Act (1) to approve, ratify and confirm the agreement entered into by the Community and its neighboring non-Indian communities, (2) to authorize and direct the Secretary to execute and perform such agreement, and (3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Community as provided in the agreement and this Act.

SEC. 3. DEFINITIONS.

For the purposes of this Act—

(a) "Agreement" means that agreement dated February 12, 1988, among the Salt River Pima Maricopa Indian Community; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona town of Gilbert; and the Central Arizona Water Conservation District, together with all exhibits thereto.

(b) "Allottees" means owners of allotted land within the Salt River Pima-Maricopa Indian Reservation.

(c) "Bartlett Dam Agreement" means the agreement between the United States and the Salt River Valley Water Users'

Association dated June 3, 1935, relating to Verde River storage works.

(d) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(e) "CAWCD" means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(f) "Community" means the Salt River Pima-Maricopa Indian Community, a community of Pima and Maricopa Indians organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 461 et seq.).

(g) "Kent Decree" means the decree dated March 1, 1910, entered in Patrick T. Hurley versus Charles F. Abbott, and others, Case Numbered 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

(h) "Plan 6 Agreement" means the agreement among the United States; the CAWCD; the Flood Control District of Maricopa County; SRP; the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe; the State of Arizona; and the City of Tucson, for funding of Plan 6 facilities of the CAP, and for other purposes, dated April 15, 1986, together with Exhibits A, B, C, and D thereto.

(i) "RID" means the Roosevelt Irrigation District, an irrigation district organized under the laws of Arizona.

(j) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(k) "Secretary" means the Secretary of the United States Department of the Interior.

(l) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

SEC. 4. KENT DECREE REREGULATION.

Conservation.

(a) The Secretary is authorized and directed to designate seven thousand acre-feet (hereinafter referred to as "Designated Space") of the additional active conservation capacity which will result from the modifications to Roosevelt Dam on the Salt River previously authorized by the Reclamation Safety of Dams Act of 1978, as amended (43 U.S.C. 506 et seq.), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 et seq.), and the relevant provisions relating to "Construction Program" contained in title II of the Act making appropriations for energy and water development for the fiscal year ending September 30, 1988, and for other purposes (Public Law 100-202), to be used for the reregulation of the Community's entitlement to water under the Kent Decree. The Designated Space shall be used for seasonal reregulation only, with no annual carry-over past October 1.

(b) The costs associated with the Designated Space shall be nonreimbursable, and the non-Federal funding obligation associated with the Designated Space under the Plan 6 Agreement and any supplement thereto is hereby forgiven.

SEC. 5. BARTLETT DAM AGREEMENT.

(a) The Secretary is directed to amend the Bartlett Dam Agreement to provide that the Salt River Valley Water Users' Association shall increase the total Community allotment of developed water to twenty thousand acre-feet on December 31 of any calendar year in which all of the following three conditions occur:

(1) for at least two hundred and ninety-two days of the calendar year the total water stored in Salt River Valley Water Users' Association reservoirs on the Verde River is more than the storage capacity of Bartlett Dam Reservoir, which, for the purposes of this Act, is deemed to be one hundred seventy-eight thousand, one hundred eighty-six acre-feet, as periodically adjusted by the Salt River Valley Water Users' Association for silt losses;

(2) the total Community allotment of developed water under the Bartlett Dam Agreement generated during the calendar year is less than seven thousand acre-feet;

(3) the total Community allotment of developed water under the Bartlett Dam Agreement existing at the end of the calendar year is less than twenty thousand acre-feet.

(b) Article 4 of the Bartlett Dam Agreement shall be deleted and replaced with the following language: "ARTICLE 4. OPERATION OF STORAGE WORKS 'The works to be constructed upon Verde River shall be operated and maintained by the Association. The Association may at any time store any part or all of Flow of Verde River in the reservoir, and may at any time release any quantity of water from the reservoir or it may permit the river to flow through the reservoir without regulation.' ".

(c) Except as provided in subsections (a) and (b), all terms of the Bartlett Dam Agreement shall remain unchanged and in full force and effect.

SEC. 6. RATIFICATION AND CONFIRMATION OF CONTRACTS.

(a) The contract between the Salt River Valley Water Users' Association and the Carrick and Mangham Aqua Fria Lands and Irrigation Company (the predecessor of the Roosevelt Irrigation District) dated August 25, 1921, together with the modifications thereto dated February 3, 1927, and May 31, 1950, is ratified, confirmed, and declared to be valid.

(b) The contract between the Salt River Valley Water Users' Association and the Roosevelt Water Conservation District dated October 24, 1924, together with all amendments thereto and any extension thereto entered into pursuant to the Agreement is ratified, confirmed, and declared to be valid.

(c) The Secretary is authorized and directed to revise the subcontract of the Roosevelt Water Conservation District for agricultural water service from the CAP to include an addendum substantially in the form of exhibit "3.1" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time or times as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(d) The Secretary is authorized and directed to execute and perform that agreement among the United States, the CAWCD, the RWCD, the Arizona cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix, and the Arizona town of Gilbert providing for the

assignment of a portion of the RWCD's entitlement to agricultural water service from the CAP and other matters in substantially the form of exhibit "12.3" to the Agreement, and such agreement is hereby ratified, confirmed, and declared to be valid.

(e) The Secretary is authorized and directed, at such time as the authorizations in section 10(b)(1) become effective, to certify that the lands within the RWCD are free from the ownership and full cost pricing limitations of Federal reclamation law.

SEC. 7. COLORADO RIVER WATER EXCHANGE. Contracts.

(a) On or before December 31, 1990, the Secretary shall acquire, from willing irrigation districts and their landowners (hereinafter "sellers"), rights to twenty-two thousand acre-feet of annual consumptive use of water from the main stream of the Colorado River in the State of Arizona with a contractual priority predating September 30, 1968, and which was not included by the Secretary, the Arizona Water Commission, or the Arizona Department of Water Resources in the determination of the water supplies available to the CAP for the purpose of establishing the initial allocations to non-Indian entities. Nothing in this Act shall alter the responsibilities of the United States under article V of the March 9, 1964, Decree of the United States Supreme Court in Arizona versus California, 376 U.S. 340.

(b) The Secretary is authorized, as part of consideration to willing sellers for the acquisition of water pursuant to subsection (a), to amend existing repayment contracts with the United States to which such sellers are subject to provide for the discharge of any remaining repayment obligation which the irrigation districts owe the United States as of May 30, 1987, and to certify that the lands within the irrigation districts are free from the ownership and full cost pricing limitations of Federal reclamation law.

(c) The Secretary shall contract to deliver such water to the Arizona cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, and Phoenix, and the Arizona town of Gilbert, in exchange for water provided by these cities and the town to the Community, in the amounts set forth in the Agreement. Such water shall increase the supply available for delivery to CAP non-Indian municipal and industrial subcontractors of CAP water service. The terms of each water delivery contract shall be in a form mutually acceptable to the respective parties thereto and substantially similar to exhibits "3.h.1" through "3.h.7" to the Agreement, which exhibits substantially conform to the terms of the CAP municipal and industrial water service subcontracts to which each of such cities and the town are parties on the effective date of this Act, except that:

(1) there shall be no water service capital charges associated with water deliveries made pursuant to the contracts authorized by this section, except as otherwise provided in the Agreement;

(2) for the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 between the United States of America and the Central Arizona Water Conservation District dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of water to cities and the town pursuant to the contracts authorized by this section shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation;

(3) notwithstanding the provisions of section 9(e) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(e)) and section 304(b)(2) of the Colorado River Basin Project Act (43 U.S.C. 1524(b)(2)), the term of the contracts authorized by this section shall be perpetual.

(d) Within one year of the date of enactment of this Act the cities and the town shall deposit $9,000,000 in an escrow account as provided in the Agreement for the purposes of funding the acquisition of the rights to water referred to in subsection (a). On or after the date the waiver referred to in section 10(b)(1) becomes effective, monies shall be paid out of the escrow account to the United States in accordance with the Agreement: *Provided,* That such payment shall not exceed the costs incurred by the Secretary pursuant to subsection (a) or $9,000,000, whichever amount is less. Any monies remaining in escrow account after payment to the United States shall be returned to cities and the town. If the waiver referred to in section 10(b)(1) do not become effective by December 31, 1991, all monies in the escrow account shall be returned to the cities and the town in accordance with the Agreement.

(e) Neither the Salt River Valley Water Users' Association nor the Salt River Project Agricultural Improvement and Power District shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) by virtue of either its participation in the settlement or its execution and performance of the Agreement, including but not limited to the exchange provided for in this section.

SEC. 8. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE.

(a) The Secretary is authorized and directed to amend the CAP water delivery contract between the United States and the Community dated December 11, 1980 (herein referred to as the "Community CAP Delivery Contract"), as follows:

(1) to extend the term of such contract to December 31, 2098, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties prior to the expiration of the extended term thereof;

(2) to authorize the Community to lease the CAP water to which the Community is entitled under the Community CAP Delivery Contract to the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe and the Arizona town of Gilbert under the terms and conditions of the Project Water Lease set forth in exhibits "3.m.1" through "3.m.7" to the Agreement for a term commencing January 1, 2000, and ending December 30, 2098;

(3) to perform the specific terms and conditions set forth in exhibit "3.j." to the Agreement.

(b) Notwithstanding any other provision of law, the amendments to the Community CAP Delivery Contract set forth in exhibit "3.j." to the Agreement and the terms and conditions of the Project Water Leases set forth in exhibits "3.m.1" through "3.m.7" to the Agreement are hereby authorized, approved, and confirmed.

(c) Consistent with subsection (d)(1) of this section, the United States shall not impose upon the Community the operation, maintenance and replacement charges described and set forth in section 7(b) of the Community CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to

the cities and the town pursuant to the Community CAP Delivery Contract and the Project Water Leases herein authorized.

(d) The Community and the Secretary shall lease to the cities and the town, for a term commencing on January 1, 2000, and ending December 30, 2098, and for the total consideration of $16,000,000 to be paid by the cities and the town to the Community, upon those terms reflected in the Project Water Leases set forth in exhibits "3.m.1" through "3.m.7" to the Agreement, up to thirteen thousand three hundred acre-feet of CAP water to which the Community is entitled under the Community CAP Delivery Contract. The Project Water Leases shall specifically provide that—

(1) the cities and the town, each in accordance with its obligations under the Project Water Leases, shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the Central Arizona Water Conservation District: *Provided*, That such payments shall not be commenced earlier than October 1, 1998;

(2) except as otherwise provided in the Project Water Leases, the cities and the town shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance, and replacement costs and lease payments as set forth in this subsection.

(e) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 between the United States of America and the Central Arizona Water Conservation District dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of CAP water pursuant to the Project Water Leases referred to in subsection (d) shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(f) Except as authorized by this section, no water received by the Community pursuant to the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation.

SEC. 9. CONSTRUCTION AND REHABILITATION; TRUST FUND.

(a) The Secretary is directed—

(1) pursuant to the existing authority of the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.), to design and construct new facilities for the delivery of water from the Community's turnout on the CAP Granite Reef Aqueduct and from the Arizona Canal to the irrigable Community reservation lands lying north of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement and to irrigable Community reservation lands south of the Arizona Canal at a cost which shall not exceed the cost for such design and construction which would have been incurred by the Secretary in the absence of the Agreement and this Act;

(2) pursuant to existing authority and obligation of the Snyder Act (25 U.S.C. 13), to deposit into the Community Trust Fund established under subsection (b)(1) $17,000,000 for the rehabilitation and improvement of the Community's existing facilities for the delivery of water to irrigable Community reservation lands lying south of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement; and

(3) to deposit into the Community Trust Fund the funds authorized to be appropriated by subsection (c) for the Commu- Community development.

nity to use in the design and construction of facilities to put to beneficial use the Community's water entitlement, to defray the cost to the Community of CAP operation, maintenance and replacement charges, and for other economic and community development on the Salt River Indian Reservation.

(b)(1) As soon as practicable, the Community shall establish the Salt River Community Trust Fund into which shall be deposited—

(A) by the Secretary, the funds provided in paragraphs (2) and (3) of subsection (a), and

(B) by the State of Arizona, $3,000,000 required by paragraph 20.2(b) of the Agreement.

Appropriation authorization.

(c) There is hereby authorized to be appropriated $30,470,000 to carry out the provisions of paragraph (3) of subsection (a).

(d) Upon the completion of the actions described in section 12(a), the Trust Fund, principal and income, may be used by the Community, in its discretion, to fulfill the purposes of the Agreement and this Act, but no part of such fund may be used to make per capita payments to members of the Community.

(e) Effective with the payments into the Trust Fund by the Secretary of the amounts required under paragraph (A) of subsection (b)—

(A) the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from the Trust Fund, and

(B) the United States shall not be liable for any claim or cause of action arising from the Community's use and expenditure of moneys from the Trust Fund.

SEC. 10. CLAIMS EXTINGUISHMENT; WAIVERS AND RELEASES.

(a)(1) There are extinguished—

(A) all Allottees' claims against the United States for damages for deprivation of water rights through December 31, 1991;

(B) all Allottees' claims against all persons other than the United States for damages for deprivation of water rights through December 31, 1991, for which damages are not recoverable under subparagraph (a)(1)(A) of this section; and

(C) all rights of Allottees to assert claims against the United States and all other persons for declaratory, injunctive or other relief for the determination or enforcement of water rights for allotted lands, including rights to surface water, ground water, and effluent.

(2) For purposes of paragraph (a)(1) of this section claims for water rights include all claims under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other relief.

(3) The benefits realized by the Allottees under this Act shall constitute full and complete satisfaction of all Allottees' claims for water rights under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) that may accrue after the authorizations contained in paragraph (b)(1) of this section have become effective and which would otherwise have been enforceable by money damages, declaratory relief, injunction, or other relief.

(4) Consent is given to Allottees to maintain actions, individually or as a class, against the United States in the United States Claims Court pursuant to section 1491 of title 28, United States Code, to

recover damages, if any, for the extinguishment of claims effected by subparagraphs (a)(1)(A) and (a)(1)(B) of this section: *Provided, however,* That any claim for damages for rights extinguished by subparagraph (a)(1)(B) of this section shall not be joined in the same action as a claim for damages for rights extinguished by subparagraph (a)(1)(A) of this section.

(5) The United States shall have a claim only against the Community for any judgment entered against it in any action for damages for water rights extinguished by subparagraph (a)(1)(B) of this section, and the Community shall not have sovereign immunity with respect to such claim.

(6)(A) With respect to any claim against the United States which is extinguished by subparagraphs (a)(1)(A) and (a)(1)(B), the United States may assert as a defense in any action brought pursuant to paragraph (a)(4) of this section the limitation of section 2501 of title 28, United States Code, as to damages incurred more than six years before the commencement of the action, but it shall not assert a timeliness defense as to damages incurred within six years before the commencement of the action.

(B) With respect to any claim for damages for rights extinguished by subparagraph (a)(1)(B) of this section, the United States may assert as a defense any defense which the person whose liability was extinguished might have asserted in an action brought by the Allottees against him prior to the effective date of this Act.

(b)(1) The Community is authorized, as part of the performance of its obligations under the Agreement, to execute a waiver and release of all present and future claims of water rights or injuries to water rights (including water rights in ground water, surface water, and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in ground water, surface water, and effluent), from and after the effective date of this Act, which the Community may have, or which it may have standing to assert on behalf of its members and Allottees, against the United States; the State of Arizona or any agency or political subdivision thereof; or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(2) In any action asserted within two years after the date of enactment of this Act by the Community against the United States in the United States Claims Court for monetary damages based upon loss or impairment of water rights the United States may assert a limitation as to damages incurred more than eight years before the commencement of the action instead of the six year limitation of section 2501 of title 28, United States Code, and it shall not assert a timeliness defense as to damages incurred within eight years before the commencement of the action.

(c) The benefits realized by the Community under this Act shall constitute full and complete satisfaction of all monetary claims against the United States for any damages alleged to accrue after completion of the requirements of section 12(a).

(d) Except as provided in paragraph (a)(5) of this section and paragraphs 17.2 and 17.5 of the Agreement, the United States shall not assert any claim against any person in its own right or on behalf of the Community based upon—

(1) water rights or injuries to water rights of the Community, its members or Allottees; or

(2) water rights or injuries to water rights held by the United States on behalf of the Community, its members or Allottees.

(e) In the event the authorizations contained in paragraph (b)(1) of this section do not become effective pursuant to section 12(a), the Community shall retain the right to assert past and future water rights claims as to all reservation lands.

SEC. 11. MISCELLANEOUS PROVISIONS.

Claims.

(a) In the event any party to the Agreement should file a lawsuit in Federal District Court only relating directly to the interpretation or enforcement of the Agreement, naming the United States of America or the Communities as parties, authorization is hereby granted to join the United States of America and/or the Community in any such litigation, and any claim by the United States of America or the Community to sovereign immunity from such suit is hereby waived.

Claims.

(b) From and after the effective date of this Act, the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District collectively are authorized to assert, on behalf of the Community, the Community's claims to spill water, as defined in the Agreement, in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa (hereinafter referred to as the "Gila River Adjudication"). From and after such effective date, the United States shall not prosecute a separate claim or claims for spill water on behalf of the Community in the Gila River Adjudication or in any other administrative or judicial proceeding. The United States shall not challenge any claims to spill water on behalf of the Community in the Gila River Adjudication or in any other administrative or judicial proceeding.

43 USC 1522 note.

(c) Upon the effective date of this Act as set forth in section 12, section 302 of the Colorado River Basin Project Act (43 U.S.C. 1522) shall no longer apply to the Community.

(d) The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this Act or the Agreement against any Indian-owned land within the Community's reservation, and no assessment shall be made in regard to such costs against such lands.

(e) Water received by the Cities and Town pursuant to paragraphs 10.3, 11.0, 12.2, and 19.0 of the Agreement shall not affect any future allocation or reallocation of the CAP supply.

(f) To the extent the Agreement does not conflict with the provisions of this Act, such Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to execute and perform such Agreement. The Secretary is further authorized to execute any amendments to the Agreement and perform any actions required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(g) Effective as of the date of enactment of this Act, and, notwithstanding the provisions of section 177 of title 25 United States Code, the Salt River Pima-Maricopa Indian Community may, as to any land outside of the Salt River Pima-Maricopa Indian Reservation to which it holds fee title, leasehold interest or any other interest, sell, encumber, hypothecate, lease or otherwise deal with such land or interest in such land as any other owner, lessor or interest holder might, subject to the laws of the state within which the land is situated.

(h) Within thirty days after the date of enactment of this Act, the Secretary shall request the Arizona Department of Water Resources to recommend a reallocation of non-Indian agricultural CAP water that has been offered to but not contracted for by potential non-Indian agricultural subcontractors. Within one hundred and eighty days of receipt of such recommendations, the Secretary shall reallocate such water for non-Indian agricultural use, and the Secretary and CAWCD shall thereafter offer amendatory or new subcontracts for such water to non-Indian agricultural users.

Agriculture and agricultural commodities.

SEC. 12. EFFECTIVE DATE.

Contracts.

(a) The authorizations contained in section 10(b)(1) of this Act shall not be effective until such time as—

(1) the Secretary has fulfilled the requirements of sections 4 and 7;

(2) the Bartlett Dam Agreement has been amended as provided in section 5;

(3) the Roosevelt Water Conservation District subcontract for agricultural water service from CAP has been revised and executed as provided in section 6(c) and the assignment described in section 6(d) has been executed;

(4) the funds required for the purpose of section 9(a)(1) have been appropriated;

(5) the funds authorized by sections 9(a)(2) and 9(c) have been appropriated and deposited into the Community Trust Fund;

(6) the State of Arizona has appropriated and deposited into the Community Trust Fund the $3,000,000 required by paragraph 20.2(b) of the Agreement;

(7) the stipulation which is attached to the Agreement as exhibit "3.e." has been approved; and

(8) the Agreement has been modified to the extent it is in conflict with this Act and has been executed by the Secretary.

(b) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) of subsection (a) have not all occurred by December 31, 1991, sections 4, 5, 6, 7(b), 7(c), 8, 9(a)(2), 9(a)(3), 9(b), 9(c), 10(a)(1)(c), 10(d), and 11(a), 11(b), 11(c), 11(d), 11(e), and 11(f), and any contracts entered into pursuant to those provisions, shall not thereafter be effective, any funds appropriated pursuant to sections 9(a)(2) and 9(c) shall revert to the Treasury, and any funds appropriated pursuant to paragraph 20.2(b) of the Agreement shall revert to the State of Arizona.

SEC. 13. OTHER CLAIMS.

Nothing in the Agreement or this Act shall be construed in any way to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Community.

SEC. 14. AK-CHIN.

Loans.

(a) The Ak-Chin Indian Community of Arizona may make repayment of the Ak-Chin West supplemental loan by a discounted prepayment in lieu of the repayment terms and provisions contained in section 5(c) of Public Law 89-984, the Small Reclamation Projects Act. The Secretary of the Interior shall determine such amount in a manner that will result in an equitable repayment based on the current applicable interest rate.

(b) The Ak-Chin West supplemental loan is hereby exempt from the 1986 amendments (Public Law 99-546) to the Small Reclamation Projects Act, and the requirement contained in section 4(e) of Small Reclamation Projects Act for a sixty-day congressional review of the approved loan application is hereby waived.

Approved October 20, 1988.

LEGISLATIVE HISTORY—H.R. 4102:

HOUSE REPORTS: No. 100-868 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 134 (1988):
Sept. 13, considered and passed House.
Sept. 30, considered and passed Senate, amended.
Oct. 3, 4, House concurred in Senate amendment.

○

Public Law 100-512
100th Congress

An Act

To provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, and for other purposes.

Oct. 20, 1988
[H.R. 4102]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.
Public lands.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988".

SEC. 2. CONGRESSIONAL FINDINGS.

(a) The Congress finds and declares that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency largely depend on development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on June 14, 1879, the United States Government established a reservation for the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, at the confluence of the Salt and Verde Rivers tributary to the Gila River;

(5) the United States, as trustee for the Community, obtained water entitlements for the Community pursuant to the Kent Decree of 1910 and the Bartlett Dam Agreement of 1935; however, continued uncertainty as to the full extent of the Community's entitlement to water has severely limited the Community's access to the water and financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and economic self-sufficiency;

(6) litigation to determine the full extent and nature of the Community's water rights and those of its allotted land owners, and damages thereto, is currently pending before the United States District Court in Arizona and in the United States Claims Court. The United States, as trustee for the Community, also has filed claims for the Community's water rights in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa;

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(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Community's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Community and neighboring non-Indian communities have sought to settle their disputes to water and reduce the burdens of litigation;

(8) after more than two years of negotiations, which included participation by representatives of the United States Government, the Community and neighboring non-Indian communities of the Salt River Valley, who all are party to the General Adjudication of the Gila River System and Source, the parties have entered into an agreement to resolve all water rights claims between and among themselves, to quantify the Community's entitlement to water, to provide for the orderly development of the Community's lands, and to prescribe a procedure for resolving such remaining claims which the Community and its allottees may have against the United States;

(9) pursuant to the agreement, the neighboring non-Indian communities will transfer rights to approximately thirty-two thousand acre-feet of surface water to the Community, provide for the means of firming existing water supplies of the Community, and make substantial additional contributions to carry out the agreement's provisions; and

(10) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Community, it is appropriate that the United States participate in the implementation of the agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Community to utilize fully its water entitlements in developing a diverse, efficient reservation economy.

(b) Therefore, it is the purpose of this Act (1) to approve, ratify and confirm the agreement entered into by the Community and its neighboring non-Indian communities, (2) to authorize and direct the Secretary to execute and perform such agreement, and (3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Community as provided in the agreement and this Act.

SEC. 3. DEFINITIONS.

For the purposes of this Act—

(a) "Agreement" means that agreement dated February 12, 1988, among the Salt River Pima Maricopa Indian Community; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona town of Gilbert; and the Central Arizona Water Conservation District, together with all exhibits thereto.

(b) "Allottees" means owners of allotted land within the Salt River Pima-Maricopa Indian Reservation.

(c) "Bartlett Dam Agreement" means the agreement between the United States and the Salt River Valley Water Users'

Association dated June 3, 1935, relating to Verde River storage works.

(d) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(e) "CAWCD" means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(f) "Community" means the Salt River Pima-Maricopa Indian Community, a community of Pima and Maricopa Indians organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 461 et seq.).

(g) "Kent Decree" means the decree dated March 1, 1910, entered in Patrick T. Hurley versus Charles F. Abbott, and others, Case Numbered 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

(h) "Plan 6 Agreement" means the agreement among the United States; the CAWCD; the Flood Control District of Maricopa County; SRP; the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe; the State of Arizona; and the City of Tucson, for funding of Plan 6 facilities of the CAP, and for other purposes, dated April 15, 1986, together with Exhibits A, B, C, and D thereto.

(i) "RID" means the Roosevelt Irrigation District, an irrigation district organized under the laws of Arizona.

(j) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(k) "Secretary" means the Secretary of the United States Department of the Interior.

(l) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

SEC. 4. KENT DECREE REREGULATION.

Conservation

(a) The Secretary is authorized and directed to designate seven thousand acre-feet (hereinafter referred to as "Designated Space") of the additional active conservation capacity which will result from the modifications to Roosevelt Dam on the Salt River previously authorized by the Reclamation Safety of Dams Act of 1978, as amended (43 U.S.C. 506 et seq.), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 et seq.), and the relevant provisions relating to "Construction Program" contained in title II of the Act making appropriations for energy and water development for the fiscal year ending September 30, 1988, and for other purposes (Public Law 100-202), to be used for the reregulation of the Community's entitlement to water under the Kent Decree. The Designated Space shall be used for seasonal reregulation only, with no annual carry-over past October 1.

(b) The costs associated with the Designated Space shall be nonreimbursable, and the non-Federal funding obligation associated with the Designated Space under the Plan 6 Agreement and any supplement thereto is hereby forgiven.

SEC. 5. BARTLETT DAM AGREEMENT.

(a) The Secretary is directed to amend the Bartlett Dam Agreement to provide that the Salt River Valley Water Users' Association shall increase the total Community allotment of developed water to twenty thousand acre-feet on December 31 of any calendar year in which all of the following three conditions occur:

(1) for at least two hundred and ninety-two days of the calendar year the total water stored in Salt River Valley Water Users' Association reservoirs on the Verde River is more than the storage capacity of Bartlett Dam Reservoir, which, for the purposes of this Act, is deemed to be one hundred seventy-eight thousand, one hundred eighty-six acre-feet, as periodically adjusted by the Salt River Valley Water Users' Association for silt losses;

(2) the total Community allotment of developed water under the Bartlett Dam Agreement generated during the calendar year is less than seven thousand acre-feet;

(3) the total Community allotment of developed water under the Bartlett Dam Agreement existing at the end of the calendar year is less than twenty thousand acre-feet.

(b) Article 4 of the Bartlett Dam Agreement shall be deleted and replaced with the following language: "ARTICLE 4. OPERATION OF STORAGE WORKS 'The works to be constructed upon Verde River shall be operated and maintained by the Association. The Association may at any time store any part or all of Flow of Verde River in the reservoir, and may at any time release any quantity of water from the reservoir or it may permit the river to flow through the reservoir without regulation.' ".

(c) Except as provided in subsections (a) and (b), all terms of the Bartlett Dam Agreement shall remain unchanged and in full force and effect.

SEC. 6. RATIFICATION AND CONFIRMATION OF CONTRACTS.

(a) The contract between the Salt River Valley Water Users' Association and the Carrick and Mangham Aqua Fria Lands and Irrigation Company (the predecessor of the Roosevelt Irrigation District) dated August 25, 1921, together with the modifications thereto dated February 3, 1927, and May 31, 1950, is ratified, confirmed, and declared to be valid.

(b) The contract between the Salt River Valley Water Users' Association and the Roosevelt Water Conservation District dated October 24, 1924, together with all amendments thereto and any extension thereto entered into pursuant to the Agreement is ratified, confirmed, and declared to be valid.

(c) The Secretary is authorized and directed to revise the subcontract of the Roosevelt Water Conservation District for agricultural water service from the CAP to include an addendum substantially in the form of exhibit "3.1" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time or times as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(d) The Secretary is authorized and directed to execute and perform that agreement among the United States, the CAWCD, the RWCD, the Arizona cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix, and the Arizona town of Gilbert providing for the

assignment of a portion of the RWCD's entitlement to agricultural water service from the CAP and other matters in substantially the form of exhibit "12.3" to the Agreement, and such agreement is hereby ratified, confirmed, and declared to be valid.

(e) The Secretary is authorized and directed, at such time as the authorizations in section 10(b)(1) become effective, to certify that the lands within the RWCD are free from the ownership and full cost pricing limitations of Federal reclamation law.

SEC. 7. COLORADO RIVER WATER EXCHANGE. Contracts

(a) On or before December 31, 1990, the Secretary shall acquire, from willing irrigation districts and their landowners (hereinafter "sellers"), rights to twenty-two thousand acre-feet of annual consumptive use of water from the main stream of the Colorado River in the State of Arizona with a contractual priority predating September 30, 1968, and which was not included by the Secretary, the Arizona W.. er Commission, or the Arizona Department of Water Resources in the determination of the water supplies available to the CAP for the purpose of establishing the initial allocations to non-Indian entities. Nothing in this Act shall alter the responsibilities of the United States under article V of the March 9, 1964, Decree of the United States Supreme Court in Arizona versus California, 376 U.S. 340.

(b) The Secretary is authorized, as part of consideration to willing sellers for the acquisition of water pursuant to subsection (a), to amend existing repayment contracts with the United States to which such sellers are subject to provide for the discharge of any remaining repayment obligation which the irrigation districts owe the United States as of May 30, 1987, and to certify that the lands within the irrigation districts are free from the ownership and full cost pricing limitations of Federal reclamation law.

(c) The Secretary shall contract to deliver such water to the Arizona cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, and Phoenix, and the Arizona town of Gilbert, in exchange for water provided by these cities and the town to the Community, in the amounts set forth in the Agreement. Such water shall increase the supply available for delivery to CAP non-Indian municipal and industrial subcontractors of CAP water service. The terms of each water delivery contract shall be in a form mutually acceptable to the respective parties thereto and substantially similar to exhibits "3.h.1" through "3.h.7" to the Agreement, which exhibits substantially conform to the terms of the CAP municipal and industrial water service subcontracts to which each of such cities and the town are parties on the effective date of this Act, except that:

(1) there shall be no water service capital charges associated with water deliveries made pursuant to the contracts authorized by this section, except as otherwise provided in the Agreement;

(2) for the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 between the United States of America and the Central Arizona Water Conservation District dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of water to cities and the town pursuant to the contracts authorized by this section shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation;

(3) notwithstanding the provisions of section 9(e) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(e)) and section 304(b)(2) of the Colorado River Basin Project Act (43 U.S.C. 1524(b)(2)), the term of the contracts authorized by this section shall be perpetual.

(d) Within one year of the date of enactment of this Act the cities and the town shall deposit $9,000,000 in an escrow account as provided in the Agreement for the purposes of funding the acquisition of the rights to water referred to in subsection (a). On or after the date the waiver referred to in section 10(b)(1) becomes effective, monies shall be paid out of the escrow account to the United States in accordance with the Agreement: *Provided,* That such payment shall not exceed the costs incurred by the Secretary pursuant to subsection (a) or $9,000,000, whichever amount is less. Any monies remaining in escrow account after payment to the United States shall be returned to cities and the town. If the waiver referred to in section 10(b)(1) do not become effective by December 31, 1991, all monies in the escrow account shall be returned to the cities and the town in accordance with the Agreement.

(e) Neither the Salt River Valley Water Users' Association nor the Salt River Project Agricultural Improvement and Power District shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) by virtue of either its participation in the settlement or its execution and performance of the Agreement, including but not limited to the exchange provided for in this section.

SEC. 8. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE.

(a) The Secretary is authorized and directed to amend the CAP water delivery contract between the United States and the Community dated December 11, 1980 (herein referred to as the "Community CAP Delivery Contract"), as follows:

(1) to extend the term of such contract to December 31, 2098, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties prior to the expiration of the extended term thereof;

(2) to authorize the Community to lease the CAP water to which the Community is entitled under the Community CAP Delivery Contract to the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe and the Arizona town of Gilbert under the terms and conditions of the Project Water Lease set forth in exhibits "3.m.1" through "3.m.7" to the Agreement for a term commencing January 1, 2000, and ending December 30, 2098;

(3) to perform the specific terms and conditions set forth in exhibit "3.j." to the Agreement.

(b) Notwithstanding any other provision of law, the amendments to the Community CAP Delivery Contract set forth in exhibit "3.j." to the Agreement and the terms and conditions of the Project Water Leases set forth in exhibits "3.m.1" through "3.m.7" to the Agreement are hereby authorized, approved, and confirmed.

(c) Consistent with subsection (d)(1) of this section, the United States shall not impose upon the Community the operation, maintenance and replacement charges described and set forth in section 7(b) of the Community CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to

the cities and the town pursuant to the Community CAP Delivery Contract and the Project Water Leases herein authorized.

(d) The Community and the Secretary shall lease to the cities and the town, for a term commencing on January 1, 2000, and ending December 30, 2098, and for the total consideration of $16,000,000 to be paid by the cities and the town to the Community, upon those terms reflected in the Project Water Leases set forth in exhibits "3.m.1" through "3.m.7" to the Agreement, up to thirteen thousand three hundred acre-feet of CAP water to which the Community is entitled under the Community CAP Delivery Contract. The Project Water Leases shall specifically provide that—

(1) the cities and the town, each in accordance with its obligations under the Project Water Leases, shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the Central Arizona Water Conservation District: *Provided,* That such payments shall not be commenced earlier than October 1, 1998;

(2) except as otherwise provided in the Project Water Leases, the cities and the town shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance, and replacement costs and lease payments as set forth in this subsection.

(e) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 between the United States of America and the Central Arizona Water Conservation District dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of CAP water pursuant to the Project Water Leases referred to in subsection (d) shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(f) Except as authorized by this section, no water received by the Community pursuant to the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation.

SEC. 9. CONSTRUCTION AND REHABILITATION; TRUST FUND.

(a) The Secretary is directed—

(1) pursuant to the existing authority of the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.), to design and construct new facilities for the delivery of water from the Community's turnout on the CAP Granite Reef Aqueduct and from the Arizona Canal to the irrigable Community reservation lands lying north of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement and to irrigable Community reservation lands south of the Arizona Canal at a cost which shall not exceed the cost for such design and construction which would have been incurred by the Secretary in the absence of the Agreement and this Act;

(2) pursuant to existing authority and obligation of the Snyder Act (25 U.S.C. 13), to deposit into the Community Trust Fund established under subsection (b)(1) $17,000,000 for the rehabilitation and improvement of the Community's existing facilities for the delivery of water to irrigable Community reservation lands lying south of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement; and

(3) to deposit into the Community Trust Fund the funds authorized to be appropriated by subsection (c) for the Commu- Community development.

nity to use in the design and construction of facilities to put to beneficial use the Community's water entitlement, to defray the cost to the Community of CAP operation, maintenance and replacement charges, and for other economic and community development on the Salt River Indian Reservation.

(b)(1) As soon as practicable, the Community shall establish the Salt River Community Trust Fund into which shall be deposited—

(A) by the Secretary, the funds provided in paragraphs (2) and (3) of subsection (a), and

(B) by the State of Arizona, $3,000,000 required by paragraph 20.2(b) of the Agreement.

Appropriation authorization.

(c) There is hereby authorized to be appropriated $30,470,000 to carry out the provisions of paragraph (3) of subsection (a).

(d) Upon the completion of the actions described in section 12(a), the Trust Fund, principal and income, may be used by the Community, in its discretion, to fulfill the purposes of the Agreement and this Act, but no part of such fund may be used to make per capita payments to members of the Community.

(e) Effective with the payments into the Trust Fund by the Secretary of the amounts required under paragraph (A) of subsection (b)—

(A) the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from the Trust Fund, and

(B) the United States shall not be liable for any claim or cause of action arising from the Community's use and expenditure of moneys from the Trust Fund.

SEC. 10. CLAIMS EXTINGUISHMENT; WAIVERS AND RELEASES.

(a)(1) There are extinguished—

(A) all Allottees' claims against the United States for damages for deprivation of water rights through December 31, 1991;

(B) all Allottees' claims against all persons other than the United States for damages for deprivation of water rights through December 31, 1991, for which damages are not recoverable under subparagraph (a)(1)(A) of this section; and

(C) all rights of Allottees to assert claims against the United States and all other persons for declaratory, injunctive or other relief for the determination or enforcement of water rights for allotted lands, including rights to surface water, ground water, and effluent.

(2) For purposes of paragraph (a)(1) of this section claims for water rights include all claims under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other relief.

(3) The benefits realized by the Allottees under this Act shall constitute full and complete satisfaction of all Allottees' claims for water rights under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) that may accrue after the authorizations contained in paragraph (b)(1) of this section have become effective and which would otherwise have been enforceable by money damages, declaratory relief, injunction, or other relief.

(4) Consent is given to Allottees to maintain actions, individually or as a class, against the United States in the United States Claims Court pursuant to section 1491 of title 28, United States Code, to

recover damages, if any, for the extinguishment of claims effected by subparagraphs (a)(1)(A) and (a)(1)(B) of this section: *Provided, however,* That any claim for damages for rights extinguished by subparagraph (a)(1)(B) of this section shall not be joined in the same action as a claim for damages for rights extinguished by subparagraph (a)(1)(A) of this section.

(5) The United States shall have a claim only against the Community for any judgment entered against it in any action for damages for water rights extinguished by subparagraph (a)(1)(B) of this section, and the Community shall not have sovereign immunity with respect to such claim.

(6)(A) With respect to any claim against the United States which is extinguished by subparagraphs (a)(1)(A) and (a)(1)(B), the United States may assert as a defense in any action brought pursuant to paragraph (a)(4) of this section the limitation of section 2501 of title 28, United States Code, as to damages incurred more than six years before the commencement of the action, but it shall not assert a timeliness defense as to damages incurred within six years before the commencement of the action.

(B) With respect to any claim for damages for rights extinguished by subparagraph (a)(1)(B) of this section, the United States may assert as a defense any defense which the person whose liability was extinguished might have asserted in an action brought by the Allottees against him prior to the effective date of this Act.

(b)(1) The Community is authorized, as part of the performance of its obligations under the Agreement, to execute a waiver and release of all present and future claims of water rights or injuries to water rights (including water rights in ground water, surface water, and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in ground water, surface water, and effluent), from and after the effective date of this Act, which the Community may have, or which it may have standing to assert on behalf of its members and Allottees, against the United States; the State of Arizona or any agency or political subdivision thereof; or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(2) In any action asserted within two years after the date of enactment of this Act by the Community against the United States in the United States Claims Court for monetary damages based upon loss or impairment of water rights the United States may assert a limitation as to damages incurred more than eight years before the commencement of the action instead of the six year limitation of section 2501 of title 28, United States Code, and it shall not assert a timeliness defense as to damages incurred within eight years before the commencement of the action.

(c) The benefits realized by the Community under this Act shall constitute full and complete satisfaction of all monetary claims against the United States for any damages alleged to accrue after completion of the requirements of section 12(a).

(d) Except as provided in paragraph (a)(5) of this section and paragraphs 17.2 and 17.5 of the Agreement, the United States shall not assert any claim against any person in its own right or on behalf of the Community based upon—

(1) water rights or injuries to water rights of the Community, its members or Allottees; or

(2) water rights or injuries to water rights held by the United States on behalf of the Community, its members or Allottees.

(e) In the event the authorizations contained in paragraph (b)(1) of this section do not become effective pursuant to section 12(a), the Community shall retain the right to assert past and future water rights claims as to all reservation lands.

SEC. 11. MISCELLANEOUS PROVISIONS.

Claims.

(a) In the event any party to the Agreement should file a lawsuit in Federal District Court only relating directly to the interpretation or enforcement of the Agreement, naming the United States of America or the Communities as parties, authorization is hereby granted to join the United States of America and/or the Community in any such litigation, and any claim by the United States of America or the Community to sovereign immunity from such suit is hereby waived.

Claims.

(b) From and after the effective date of this Act, the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District collectively are authorized to assert, on behalf of the Community, the Community's claims to spill water, as defined in the Agreement, in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa (hereinafter referred to as the "Gila River Adjudication"). From and after such effective date, the United States shall not prosecute a separate claim or claims for spill water on behalf of the Community in the Gila River Adjudication or in any other administrative or judicial proceeding. The United States shall not challenge any claims to spill water on behalf of the Community in the Gila River Adjudication or in any other administrative or judicial proceeding.

43 USC 1522 note.

(c) Upon the effective date of this Act as set forth in section 12, section 302 of the Colorado River Basin Project Act (43 U.S.C. 1522) shall no longer apply to the Community.

(d) The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this Act or the Agreement against any Indian-owned land within the Community's reservation, and no assessment shall be made in regard to such costs against such lands.

(e) Water received by the Cities and Town pursuant to paragraphs 10.3, 11.0, 12.2, and 19.0 of the Agreement shall not affect any future allocation or reallocation of the CAP supply.

(f) To the extent the Agreement does not conflict with the provisions of this Act, such Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to execute and perform such Agreement. The Secretary is further authorized to execute any amendments to the Agreement and perform any actions required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(g) Effective as of the date of enactment of this Act, and, notwithstanding the provisions of section 177 of title 25 United States Code, the Salt River Pima-Maricopa Indian Community may, as to any land outside of the Salt River Pima-Maricopa Indian Reservation to which it holds fee title, leasehold interest or any other interest, sell, encumber, hypothecate, lease or otherwise deal with such land or interest in such land as any other owner, lessor or interest holder might, subject to the laws of the state within which the land is situated.

(h) Within thirty days after the date of enactment of this Act, the Secretary shall request the Arizona Department of Water Resources to recommend a reallocation of non-Indian agricultural CAP water that has been offered to but not contracted for by potential non-Indian agricultural subcontractors. Within one hundred and eighty days of receipt of such recommendations, the Secretary shall reallocate such water for non-Indian agricultural use, and the Secretary and CAWCD shall thereafter offer amendatory or new subcontracts for such water to non-Indian agricultural users.

Agriculture and agricultural commodities.

SEC. 12. EFFECTIVE DATE.

Contracts

(a) The authorizations contained in section 10(b)(1) of this Act shall not be effective until such time as—

(1) the Secretary has fulfilled the requirements of sections 4 and 7;

(2) the Bartlett Dam Agreement has been amended as provided in section 5;

(3) the Roosevelt Water Conservation District subcontract for agricultural water service from CAP has been revised and executed as provided in section 6(c) and the assignment described in section 6(d) has been executed;

(4) the funds required for the purpose of section 9(a)(1) have been appropriated;

(5) the funds authorized by sections 9(a)(2) and 9(c) have been appropriated and deposited into the Community Trust Fund;

(6) the State of Arizona has appropriated and deposited into the Community Trust Fund the $3,000,000 required by paragraph 20.2(b) of the Agreement;

(7) the stipulation which is attached to the Agreement as exhibit "3.e." has been approved; and

(8) the Agreement has been modified to the extent it is in conflict with this Act and has been executed by the Secretary.

(b) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) of subsection (a) have not all occurred by December 31, 1991, sections 4, 5, 6, 7(b), 7(c), 8, 9(a)(2), 9(a)(3), 9(b), 9(c), 10(a)(1)(c), 10(d), and 11(a), 11(b), 11(c), 11(d), 11(e), and 11(f), and any contracts entered into pursuant to those provisions, shall not thereafter be effective, any funds appropriated pursuant to sections 9(a)(2) and 9(c) shall revert to the Treasury, and any funds appropriated pursuant to paragraph 20.2(b) of the Agreement shall revert to the State of Arizona.

SEC. 13. OTHER CLAIMS.

Nothing in the Agreement or this Act shall be construed in any way to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Community.

SEC. 14. AK-CHIN.

Loans

(a) The Ak-Chin Indian Community of Arizona may make repayment of the Ak-Chin West supplemental loan by a discounted prepayment in lieu of the repayment terms and provisions contained in section 5(c) of Public Law 89-984, the Small Reclamation Projects Act. The Secretary of the Interior shall determine such amount in a manner that will result in an equitable repayment based on the current applicable interest rate.

(b) The Ak-Chin West supplemental loan is hereby exempt from the 1986 amendments (Public Law 99-546) to the Small Reclamation Projects Act, and the requirement contained in section 4(e) of Small Reclamation Projects Act for a sixty-day congressional review of the approved loan application is hereby waived.

Approved October 20, 1988.

LEGISLATIVE HISTORY—H.R. 4102:

HOUSE REPORTS: No. 100-568 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 134 (1988):
Sept. 13, considered and passed House.
Sept. 30, considered and passed Senate, amended.
Oct. 3, 4, House concurred in Senate amendment.

○

EXHIBIT "21.7"

1977 Water Commissioner's Report

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PATRICK T. HURLEY, Plaintiff,	)	NO. C-4564
UNITED STATES OF AMERICA, Intervenor,	)	WATER COMMISSIONER'S REPORT
vs.	)	
CHARLES F. ABBOTT; et al., Defendants.	)	

The undersigned, A. L. Monette, heretofore having been selected and designated as the Water Commissioner to execute and carry out the provisions of the Decree herein and report to the Court with reference thereto, respectfully submits the following Report for the Court's information:

I

The Salt River Valley Water Users' Association (hereinafter referred to as the "Association"), by contracts with the United States Government of June 25, 1904, and September 6, 1917, operates the Salt River Federal Reclamation Project (hereinafter referred to as the "Salt River Project"), and delivers water pursuant to and in accordance with the Decree of the Court heretofore entered herein and commonly referred to as the "Kent Decree". The Association has, as provided for in such decree, reported to, or made its records available to, the Water Commissioner as to the operation and maintenance of the Salt River Project and the distribution of water administered by the Association under the authority of the Water Commissioner and the Kent Decree.

II

The Association has heretofore reported to the Water Commissioner that it has entered into contracts with the City of Phoenix, the City of Mesa, the City of Scottsdale, the City of Tempe, the City of Glendale, the City of Peoria, the City of Chandler and the Town of Gilbert, all of which are municipalities lying within the Salt River Reservoir District, the service area of the Association; in view of the expanded urban development within the Reservoir District of the Salt River Project land area, the Salt River Project now provides a major portion of the total domestic, commercial and industrial water supply needed by the municipal population of the above Cities; this water supply and delivery is made possible by virtue of contracts between the Cities and the Association, each of which has been approved by the Secretary of the Interior of the United States, whereby the Cities pay the Association the annual assessment owed by each landowner on lands that have become urbanized and are no longer utilized for agricultural purposes; the water to which these lands are entitled, including normal flow, stored and developed, surface and underground water is delivered by the Association to the Cities' water filtration plants for use on regular member and townsite lands within the Reservoir District, primarily for municipal and industrial purposes; the Cities are contracting parties with the Association (or propose to become contracting parties with the Association) in order that each municipality contracting with the Association may make available to the owners or occupants of Association-member lands water available for beneficial use in connection with such lands, all as will be further described herein.

III

The use of water by members of the Association in connection with their respective parcels of regular member

lands and townsite lands has changed as valley lands have been urbanized, as the population of the area has increased and as municipal water sources have changed; as agricultural uses of member lands have changed to uses for residential, commercial, industrial and municipal uses, in like manner the water uses appurtenant to such lands have accordingly changed; the water distribution facilities of the Association were originally developed for the purpose of delivering irrigation water to the high point of each quarter section; without filtration and further treatment, the water delivered by the Association is not adaptable for urban and municipal uses other than urban and municipal irrigation uses; at the same time, the owners and occupants of these member lands require a water supply for the beneficial uses for which the lands have been and are now being adapted and used.

IV

The regular member lands lying within the Reservoir District are becoming urbanized and reliable forecasts indicate that this urbanization will continue; the water which has been made subject to the water delivery contracts between the Association and the Cities, and which will, in the future, progressively be delivered by the Cities for domestic, commercial and industrial uses, has been and will continue to be put to beneficial use; the uses now being made and which will be made of the water in the future will not lawfully interfere with any other existing water rights; the Water Commissioner hereby reports the changes in use of water from agricultural to municipal and industrial, and the city domestic uses for certain lands within the confines of the Salt River Reservoir District, as shown on the attached Exhibit "A".

V

In the decree entered herein it is provided that the Water Commissioner shall supervise the proper * * * distribution of the water to be diverted by the canals under the said decree * * * in accordance with the rights of the persons entitled thereto as found by the decision and decree herein.

In the decree it is further provided in part as follows:

> "Commissioner shall * * * apply to the judge of the court for such further or specific directions as to his powers and duties whenever such directions shall be necessary or proper for the effective carrying out of the provisions of the decree herein."

Your Commissioner respectfully requests that the court give specific directions as to his duties in respect to the proper distribution of water to the lands affected by the aforesaid contracts and specifically described in the tables attached hereto, in view of the changes in delivery and use under said contracts.

VI

The Water Commissioner respectfully requests the court to give notice of the filing of this report to representatives of all interested parties, viz, City of Phoenix, City of Mesa, City of Scottsdale, City of Tempe, City of Glendale, City of Peoria, City of Chandler, Town of Gilbert, the United States and the Salt River Valley Water Users' Association. The Water Commissioner respectfully requests that the court fix a time within which the interested parties may file objections or other response to the report and that a time and place be fixed by the court for considering the report and all objections or other responses thereto and that appropriate notice be ordered to all interested parties of the time within which responses may be filed to this report and of the time and place fixed by the court for considering the report and any objections and responses thereto.

Respectfully submitted this 3rd day of June, 1977.

A. L. Monette

A. L. Monette
Water Commissioner

EXHIBIT "21.14"

Statement of Policies and Principles
Regarding the Use of CAP Facilities
to Facilitate Indian Water Rights
Settlements

ADOPTED BY THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS - March 3, 1988

STATEMENT OF POLICIES AND PRINCIPLES REGARDING THE USE OF CAP FACILITIES TO FACILITATE INDIAN WATER RIGHTS SETTLEMENTS

Policy

The Board of Directors of the Central Arizona Water Conservation District recognizes that unresolved Indian water rights claims are a constraint on orderly and efficient water management. The Board recognizes that a broad public benefit is a potential result of resolution of these claims, and wishes to lend the resources of the District to efforts to realize those benefits while protecting the ability of the CAP to accomplish its primary purpose of delivering CAP water to CAP customers. Accordingly, we support and direct the use of CAP facilities to facilitate Indian water rights settlements which we find to be consistent with our basic responsibilities. As a general condition, we find that such settlements should be implemented and given priority over non-Project uses of CAP facilities, subject to the following principles:

Principles:

1. Water Supply

   a) There should be no adverse impact on water supplies otherwise available for CAP.

   b) There should be no adverse impact on CAP users that are not parties to the settlement.

c) Supplemental water supplies delivered through CAP facilities should share losses pro rata with all other water supplies delivered through such facilities.

2. System Capacity

There should be no reduction in the delivery capacity otherwise available to existing CAP subcontractors (i.e., there should be no change required in the anticipated water delivery schedules of those that are not parties to the settlement).

3. Navajo Power

a) There must be no reduction in Navajo Surplus available for long term marketing under the Navajo Marketing Plan.

b) The settlement should not interfere with the District's receiving optimum value from the sale of short term Navajo Surplus.

c) At no time may the power costs to settlement participants be less than those paid by CAP water users generally.

4. O&M Costs

The settlement should provide for the recovery of an appropriate charge to offset fixed O&M costs associated with the delivery of settlement water supplies.

5. Repayment

Water delivered through Project facilities to facilitate Indian settlements (such as replacement water and water leased by Indians to non-Indians) should be treated as if it were Project water delivered to Indian entities for purposes of determining CAWCD's repayment obligation

Subject to the foregoing principles, each proposed settlement should be considered on its own merits. The Board's approval of any particular settlement shall not be regarded as establishing any precedent for any other settlement.

EXHIBIT "3.i."

RWCD CAP Water Service Subcontract Amendment and Superior Court Decree Validating Subcontract

(Decree to be Supplied)

SUPERIOR COURT DECREE
not available as of the date the
Settlement Agreement was executed

ADDENDUM A

(With Settlement of Indian Claims)

The following is substituted for Subarticle 4.3(i): "Agricultural Water made available hereunder for eligible lands may be converted to M&I purposes if and to the extent that such water is no longer required by the Subcontractor for irrigation purposes and shall be converted in all cases where eligible lands receiving Project Agricultural Water have been converted to M&I use; Provided, That this right of conversion shall not be exercised within the areas jointly within RWCD and the CAP planning areas of Chandler, Gilbert, or Mesa, as used by Arizona Department of Water Resources (DWR) in recommending to the Contracting Officer the initial M&I water allocations to those cities (a map depicting such areas for Chandler, Gilbert, and Mesa, is attached to this Addendum as Exhibit A) until it is determined by the Contracting Officer that any portion of surface water appurtenant to such land has become permanently unavailable for use on those acres, by reason of the expiration, termination, non-renewal, or amendment of any presently existing contract or subsequent contract concerning supply of surface water to which the Subcontractor is a party, or by reason of any breach by or refusal or failure of any other contracting party to perform such contract, or by reason of any position taken by any such other contracting party as to the meaning of any such contract, or by reason of any settlement agreement, final judgment or decree of any court of competent jurisdiction which shall reduce the amount of water delivered under any such contract, in which event conversion rights may be exercised within such joint areas to the extent permitted by the following formula:

For a given acre, conversion = 1 acre-foot per acre minus (A plus B)

A = the average amount of surface water (after the extent of permanent unavailability has been determined) actually available to each of RWCD's eligible acres (not including spill water and not including surface water RWCD has agreed to contribute to the settlement of the water claims of the Salt River Pima-Maricopa Indian Community ["SRPMIC"] or the Ft. McDowell Indian Community ["FMIC"]) expressed in acre-feet per acre.

B* = the amount of CAP M&I water available to an RWCD eligible acre by virtue of the initial M&I allocations to Chandler, Gilbert, or Mesa, plus the amount of permanently available replacement surface water per acre, if

any, received by Chandler, Gilbert, or Mesa from any water settlement involving FMIC. B = C/D (expressed in acre-feet per acre).

C = the initial CAP M&I allocation for the applicable city or town, plus the amount of permanently available surface water, if any, received by Chandler, Gilbert or Mesa from any water settlement involving FMIC (expressed in acre-feet).

D = the number of acres within the CAP planning area used by DWR in recommending to the Contracting Officer the initial M&I allocation to the applicable city or town (expressed in acres).

*Note: B must be determined with reference to the allocation of the city or town associated with the planning area wherein conversion is proposed to occur. B will not be the same number for each acre within RWCD.

For the purpose of the foregoing formula, "permanently available" shall mean the availability of such replacement surface water for a term of years or an extended term of years of substantially the same length as the term of the Project Water Lease Agreements described in Paragraph 19.0 of that agreement between the SRPMIC, the subcontractor, the United States of America, and other parties dated as of February 12, 1988 ("the SRPMIC Agreement"). Water received by the Cities of Chandler and Mesa and by the Town of Gilbert pursuant to Paragraphs 12.0 and 19.0 of the SRPMIC Agreement shall not be considered to be "permanently available" for purposes of the foregoing formula.

With respect to that area within the boundaries of RWCD but outside of the CAP planning areas used by DWR in recommending to the Contracting Officer the initial M&I allocations for Chandler, Gilbert, and Mesa, CAP agricultural water may be converted to CAP M&I use to the extent permitted by the following formula:

For a given acre, conversion = 1 acre-foot per acre minus A (as defined above).

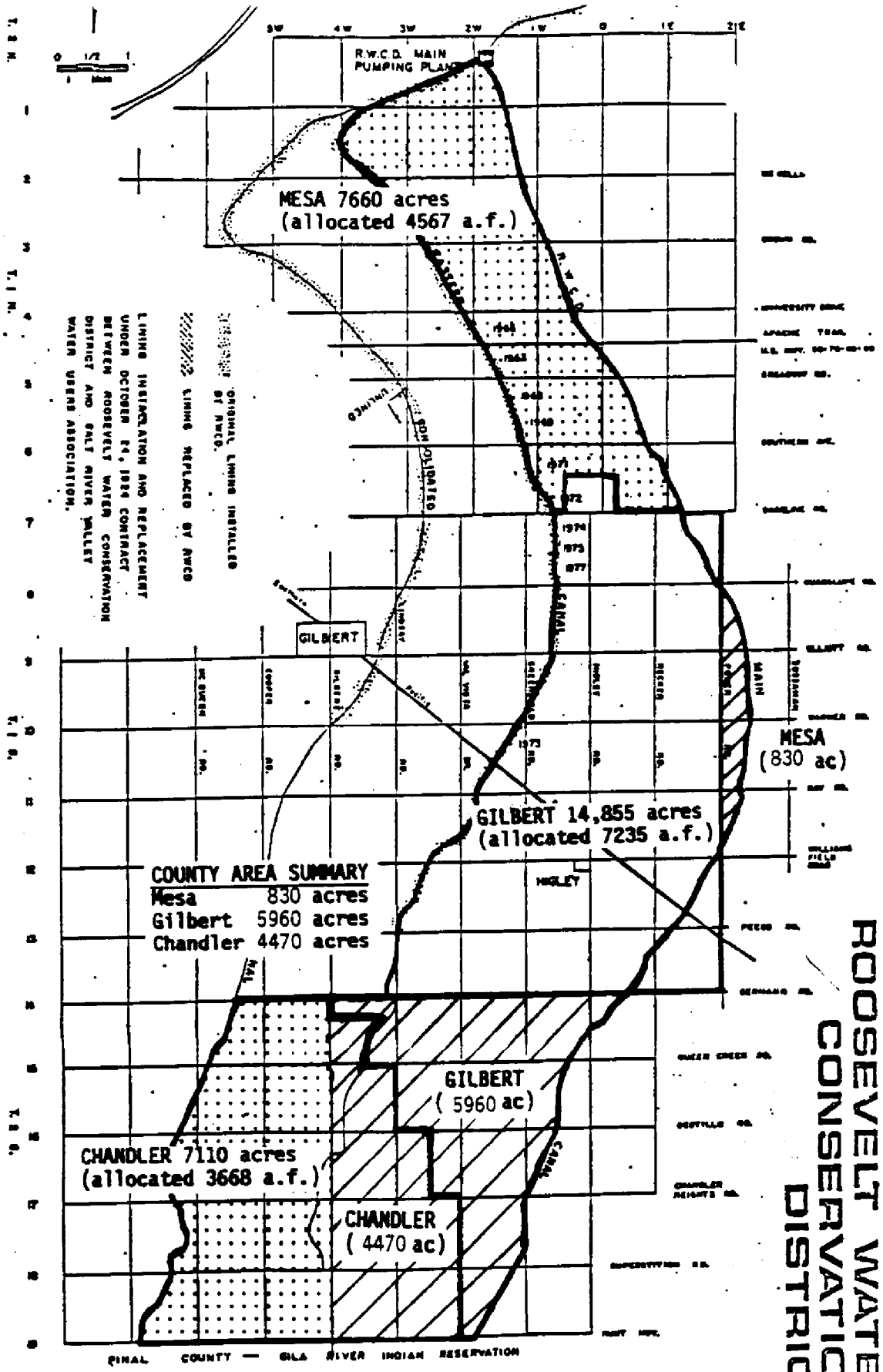
Water converted from irrigation to M&I purposes as a result of the conversion of eligible lands to M&I uses shall be used only for M&I purposes within the service area of the entity responsible for serving the converted lands.

Execution of this subcontract by the Subcontractor does not constitute an admission that any reduction of water delivered to the Subcontractor under any existing or subsequent contract concerning surface water is or would be proper or lawful.

Conversion of water from agricultural to M&I purposes shall take effect only upon a finding that the conditions described above have been fulfilled and the execution or amendment of an appropriate subcontract among the United States, the Contractor, and the M&I user. All Project Water converted from agricultural to M&I use shall be delivered at the same water service charge per acre-foot as other M&I Water and with the same priority as other Project M&I Water; Provided, That the Contractor's charge to the Subcontractor for water service shall be adjusted to reflect the conversion to M&I uses."

EXHIBIT "A"

to
Addendum A
(Exhibit "3.i")



ROOSEVELT WATER CONSERVATION DISTRICT

EXHIBIT NO. 3

PROPOSED PROJECT