

AGREEMENT FOR CONSTRUCTION OF SRP FACILITIES

This Agreement for construction, modification or relocation of SRP irrigation facilities ("Agreement") is entered into between the Salt River Valley Water Users' Association, a corporation organized under the laws of the Territory of Arizona, ("SRP"), and the City of Chandler, an Arizona municipal corporation ("City"). SRP and City may be referred to as "Party", or collectively as "Parties".

WHEREAS, City has requested that SRP irrigation facilities be modified or relocated to accommodate certain improvement or other development needs of City for Chandler RWIF Project located at SW of McQueen Road and Queen Creek Road, and;

WHEREAS, SRP is willing to construct such accommodation, in whole or in part, or to permit the City to construct such accommodation in whole or in part ("Work") with certain conditions.

THEREFORE, in consideration of the matters described herein and of the mutual benefits and obligations set forth herein, SRP and City agree as follows:

- 1) SRP shall perform the Work listed on the Construction Bid Summary Section I, and optional Section II, if offered by SRP and selected by the City. The Construction Bid Summary is attached hereto as Exhibit A. The Work is further detailed in SRP's Plans & Specifications, which are attached hereto as Exhibit B.
- 2) City shall select the desired option below by checking the box.

☒ OPTION A - Work that must be performed by SRP. City shall pay SRP \$104,190 as set forth in Section I of Exhibit A.

☐ OPTION B NOT AVAILABLE - Work that must be performed by SRP and optional pipeline construction by SRP. City shall pay SRP \$_____ as set forth in Sections I and II of Exhibit A.
- 3) a. SRP voluntarily agrees to use commercially reasonable efforts to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661 and 663 which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States.

Regulations: 1). 49 U.S.C Chapter 53, specifically, Sect. 5323 (j), Buy America Regulations 49 C.F.R part 661, and pre award and post-delivery audits 49 C.F.R part 663;

Guidance: 1). FTA's Buy America Audit Handbook, 2). OP 36 Buy America Review. FTA's guidelines, regulations, handbooks, and examples are posted on the FTA's website.

- b. If SRP is unclear regarding its obligations under this provision, SRP may seek clarification from City by giving City written notice of inquiry as soon as reasonably practicable after discovery of the issue. Such requests are limited to only (i) the items SRP cannot find a source to make a qualifying Buy America purchase, (ii) items that SRP can find a source to make a qualifying Buy America purchase, but the lead time for such purchase may unreasonably impact the Project Schedule, and (iii) SRP is unable in good faith to determine whether the Buy America requirements apply to a particular item. City will respond to the inquiry in writing within 5 working days. City's response will include City's recommendation to SRP on how to proceed, but City will not direct SRP's activities. SRP shall not be responsible for delays in performance to the extent caused by City recommendations or delays in City providing such recommendations.
- c. As soon as practicable following the execution of this Agreement, SRP will provide to City a list of materials that do not comply with Buy America and an estimated cost of purchasing such materials. City will acknowledge receipt of this statement, but will not make judgment as to the validity of the statement.
- d. City agrees, if it is determined that materials used are not in compliance with Buy America requirements, the maximum SRP liability will be no more than 150 percent of the price attributable to the materials that are not in compliance with Buy America requirements; provided, however, that if SRP has sought clarification of the material requirement under the provisions of paragraph (b) above, and has followed City's written recommendations, SRP shall have no liability.
- e. City understands that SRP's compliance with the Buy America Act may result in longer lead times for ordering materials, vendor-prescribed minimum purchase quantities, and higher material costs. SRP will pass on to City any additional costs it incurs as a result of SRP's compliance with the Buy America Act, and SRP will not be liable for schedule delays caused by longer lead times. If there is a minimum purchase quantity requirement, SRP shall deliver and transfer title to excess materials to City at agreed locations within the Phoenix metropolitan area at no additional cost to City.
- f. SRP shall not be responsible for delays caused by changes in the Project Design made by or at the direction of City.
- 4) The City shall perform any Work not included in the Work to be performed by SRP and comply with following conditions:
- a. City shall obtain such other licenses, permits, and agreements as required by any governing bodies having jurisdiction over the location which is the subject hereof.



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- b. Construction shall not commence until receipt of SRP's Notice to Proceed.
- c. City shall notify the SRP inspector and request a dryup if necessary to perform the Work. SRP cannot assure a dryup, which may only be possible for brief periods and certain times of the year.
- d. City shall indemnify, hold harmless, release and defend SRP, the United States of America (USA), the Salt River Valley Water Users' Association (Association) and each and every one of the members of their respective governing bodies, their officers, agents and employees (the "Indemnified Parties") for, from and against any and all claims, demands, suits, costs of defense, reasonable attorneys' fees, witness fees of any type, losses, damages, expenses, fines, penalties, and liabilities (collectively, "Losses") for injury to or death of any person or persons, including employees of SRP or of City or its subcontractors, or damage to property, including property of SRP or of City or its subcontractors, to which the Indemnified Parties may be put or subjected by reason of any act or omission on the part of City, any subcontractor or supplier of City, or any of the directors, officers, partners, members, managers, agents, servants or employees of City, or of its subcontractors or suppliers. City's obligations under this Section shall extend to Losses resulting from or arising out of the inability of any irrigation structure constructed or modified pursuant to this Agreement to contain or dispose of water entering the structure from a source other than SRP, the Association or the USA. City's obligations under this Section shall extend to the Indemnified Parties where they, or any one of them, are allegedly concurrently negligent with City, any subcontractor or supplier of City, or any of the directors, officers, partners, members, managers, agents, servants or employees of City, or of its subcontractors or suppliers, in causing or contributing to the liability causing event. City shall also indemnify and hold harmless (and, upon notice so requiring from SRP, also defend) the Indemnified Parties for, from and against any and all Losses for contractual claims arising out of City's agreements with third parties. City understands and agrees that City enters upon the property of the USA, Association and/or SRP at City's own risk.
- e. City warrants that construction shall conform to SRP plans and specifications and be free from defects in material and workmanship. If defect in materials or workmanship or other non-conformance with plans and specifications appears within one year from the date of SRP acceptance, and SRP so notifies City within a reasonable time after its discovery, City shall correct the non-conformity at City's sole cost and expense within thirty (30) calendar days of notice by SRP, unless correction of the non-conformity cannot reasonably be accomplished within 30 days, in which case City shall commence correction efforts within 15 days of notice from SRP and diligently prosecute such efforts to completion. If City fails to correct the non-conformity within the time

period specified by SRP, SRP may correct the non-conformity and City will pay for the cost of performing the Work.

- f. In the event the City is unable to complete its Work, SRP shall have the right, but not be obligated, to complete the Work by whatever method SRP deems appropriate. This includes providing or obtaining any labor, materials or equipment and perform any part of the incomplete Work or Work that must be redone. The cost of completing the Work, along with reasonable administrative charges or other damages caused by delays in completing the Work shall be charged to City.
- 5) Changes to the plans and specifications may only be made by SRP. SRP shall provide City with prior written notice of any changes in costs. City shall agree in writing to any changes in cost to the City.
- 6) This Agreement shall be governed in all respects by the laws of the state of Arizona.
- 7) Either Party may terminate this Agreement at any time by providing thirty (30) days written notice to the other Party. In the event the City desires to terminate this Agreement prior to the completion of SRP's work, City shall reimburse SRP for the actual costs incurred as well as reasonable costs required to restore the facilities of SRP, the USA or the Salt River Project Agricultural Improvement and Power District.
- 8) If City's sub-contractor(s) file a lien against the premises where the Work and services are being performed, City shall, at its own expense, promptly take any and all action necessary to cause any such lien to be released or discharged. If City does not satisfy the lien in a prompt manner, SRP may satisfy the amount of the lien and then City shall reimburse SRP for the amounts paid in settling the lien.
- 9) In the event of dispute involving the terms of this Agreement or an allegation of material breach by either Party, the Parties reserve all rights and remedies, arising by law or equity, but shall waive any right to demand a trial by jury in an action commenced in court with respect to any legal proceeding arising out of or relating to this Agreement.
- 10) No Waiver. The failure of SRP to insist upon strict performance of any of the terms and conditions hereof, or its delay or failure to exercise any rights or remedies provided herein by law, or its failure to properly notify City in the event of breach, shall not release City from any of the obligations of this Agreement and shall not be deemed a waiver of any rights of SRP to insist upon strict performance hereof.
- 11) This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511.



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12) This Agreement is subject to the provisions of ARIZ. REV. STAT. § 42-17106.

13) Notices:

If to City:
City of Chandler
Ms. Gina Ishidaraybourn
P. O. Box 4008
Chandler, AZ 85244-4008

If to SRP:
SRP
Attn: Andrew Johnson, Manager
Water Engineering and Transmission, MS SSW 303
P.O. Box 52025
Phoenix, Arizona 85072-2025

14) This Agreement is binding upon the Parties hereto, and their respective successors and assigns.

15) All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to SRP in connection with this Agreement is confidential, proprietary information owned by the City. Except as specifically provided in this Agreement, SRP shall not disclose data generated in the performance of the services to any third person without the prior written consent of the City, or its designee.

16) In the event there is a breach of this Agreement, the prevailing Party to litigation shall be entitled to its reasonable attorney's fees and court costs. It is further understood and agreed that in the event any dispute arises regarding this Agreement or the terms and conditions hereof, the sole venue for litigation regarding this Agreement shall be in the Courts of Maricopa County, Arizona.

17) This Agreement represents the entire agreement of the Parties and supersedes all negotiations, representations, prior discussions or preliminary agreements between the Parties. No statements, warranties or representations of any kind not created in this Agreement shall in any way bind the Parties. This Agreement can only be changed or modified by a writing signed by all of the Parties hereto.

18) No term or provision of this Agreement that is determined by a court of competent jurisdiction to be invalid or unenforceable shall affect the validity or enforceability of the remaining terms and provisions of this Agreement. Any term found to be invalid or unenforceable shall be deemed as severable from the remainder of the Agreement.



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- 19) This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement. The Parties agree that no individual performing under this Agreement on behalf of SRP will be considered a City employee, and that no rights of City civil service, City retirement or City personnel rules shall accrue to such individual. SRP shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, workers' compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals and shall save and hold harmless the City with respect thereto.
- 20) SRP shall comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs on SRP, a request for an amendment may be submitted.
- 21) This Agreement is in the nature of a personal services agreement and SRP shall have no power to assign its rights and obligations under this Agreement without the prior written consent of the City. Any attempt to assign without such prior written consent shall be void.
- 22) This Agreement is may be canceled by City for a conflict of interest pursuant to Arizona Revised Statutes §38-511.

IN WITNESS HEREOF, each Party has caused the execution of this Agreement by the undersigned, who is vested with authority to bind such Party to the terms and conditions herein.

"SRP"
Salt River Valley Water Users'
Association, an Arizona corporation



Andrew Johnson
Manager
Water Engineering

09/14/2021

Date Signed

APPROVED AS TO FORM

CITY ATTORNEY



"City"
City of Chandler, an Arizona
municipal corporation

City Representative

Title of Representative

Date Signed



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EXHIBIT A
Construction Bid Summary

File No: SRP # 2100256

SRP # 2100256
Chandler RWIF
McQueen Road and Queen Creek Road

8/16/2021

SECTION I - Items by SRP

Item	Item Description	Unit	Quantity	Unit Bid	Net Bid
1.	Construction Engineering - Survey, Inspection, & AsBuilts	LS	1	\$7,985	\$7,985
2.	LHTO Delivery Structure # B-064-0021 (Sta. 5+06.3)	LS	1	\$96,205	\$96,205
SECTION I TOTALS					\$104,190

Summary:

SECTION I - Items by SRP \$104,190
NET BID = \$104,190

NOTES:

1. This Construction Estimate Bid Summary was prepared by SRP Water Construction.
2. All utility conflicts must be resolved and completed prior to the arrival of SRP Construction forces.
3. Items, Restorations, and/or services not specifically listed in the details and quantities above are excluded.
4. Items listed in this Construction Bid Summary constitute a total bid which is valid for 60 days and expires:

October 15, 2021