

**AGREEMENT FOR ACCOUNTING AND DELIVERY OF WATER MADE AVAILABLE IN THE
MODIFIED ROOSEVELT DAM FLOOD CONTROL SPACE UNDER A TEMPORARY DEVIATION
TO THE WATER CONTROL PLAN
AMONG
VARIOUS PARTICIPATING ENTITIES,
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

1. PARTIES:

This Agreement for Accounting and Delivery of Water Made Available in the Modified Roosevelt Dam Flood Control Space Under a Temporary Deviation to the Water Control Plan ("Agreement"), entered into this ____ day of _____, 2022 is by and among the Arizona cities of Avondale, Chandler, Glendale, Mesa, Peoria, Phoenix, Scottsdale, and Tempe; Town of Gilbert; Roosevelt Water Conservation District; Buckeye Water Conservation and Drainage District; Roosevelt Irrigation District; the Salt River Pima-Maricopa Indian Community, a sovereign tribe located in the Phoenix metropolitan area; Freeport Minerals Corporation, a mining company with headquarters in Phoenix, Arizona ("Participating Entities"); the Salt River Valley Water Users' Association, an Arizona corporation ("Association"); and the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona ("District"). The Association and District are referred to collectively as "SRP". Parties to this Agreement are referred to individually as "Party" and collectively as "Parties."

2. RECITALS:

This Agreement is made regarding the following:

- 2.1. Shareholders of the Association are owners of land within the Salt River Reservoir District having valid appropriative rights to waters of the Salt and Verde Rivers. The Association is responsible for the delivery to shareholder lands of waters developed, controlled, or stored by it for the benefit of such lands. The Association is the agent of the District in the operation of the water delivery system of the Salt River Project, a federal reclamation project that includes Theodore Roosevelt Dam, pursuant to an agreement dated March 22, 1937, as amended by agreements dated February 28, 1944, and September 12, 1949, and

is also the agent of the United States of America in the operation of said federal reclamation project pursuant to a contract dated September 6, 1917.

- 2.2. Congress authorized the United States Bureau of Reclamation ("Reclamation" as defined in Subparagraph 5.17 below) to construct the Central Arizona Project ("CAP") including construction of "Orme Dam or a suitable alternative" as part of the CAP under the Colorado River Basin Act of 1968. The Central Arizona Water Conservation Study ("CAWCS") examined alternatives to Orme Dam. The Reclamation Safety of Dams Act of 1978 widened the focus of CAWCS to include the evaluation of the structural safety of Reclamation dams. The United States Department of the Interior selected one of the CAWCS alternatives known as "Plan 6" as the proposed action for purposes of detailed planning, design, and completion of the CAP. Plan 6 includes the planning and construction of modified Roosevelt Dam ("Modified Roosevelt Dam" as defined in Subparagraph 5.12 below) on the Salt River to provide flood control, water conservation, and dam safety, along with other project purposes and benefits consistent with the CAWCS.
- 2.3. SRP, Reclamation, the Flood Control District of Maricopa County, and the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe entered into the Operating Agreement for Additional Active Conservation Capacity at Modified Roosevelt Dam on December 14, 1993 ("Modified Roosevelt Dam Operating Agreement" as defined in Subparagraph 5.13 below) to establish principles governing storage capacity made available at Modified Roosevelt Dam under Plan 6. Under the Modified Roosevelt Dam Operating Agreement, the parties to that agreement recognized claims to flood and surplus waters of the Salt and Verde Rivers by certain entities who were listed in Appendix 1 to that agreement. Certain of those entities listed in Appendix 1 are Parties to this Agreement ("Participating Entities" as defined in Subparagraph 5.16).
- 2.4. Construction of additional storage at Modified Roosevelt Dam was completed in 1996 and raised the dam a total of seventy-seven (77) feet. As part of the modifications to Roosevelt Dam, certain capacity was created between elevation 2,150.78 feet above mean sea level to 2,174.87 feet above mean sea level for flood control purposes ("Flood Control Space" as defined in Subparagraph 5.9 below) (these elevations are based on the most recent silt survey and are subject to change based on results of subsequent silt surveys). Water entering the Flood Control Space is under the jurisdiction of the United States Army Corps of

Engineers (“Corps of Engineers” as defined in Subparagraph 5.4 below) under Section 7 of the Flood Control Act of 1944. SRP, Reclamation, and Corps of Engineers entered into a Water Control Agreement dated November 5, 1996 (“Water Control Agreement” as defined in Subparagraph 5.30 below) and agreed to comply with the flood control operating criteria contained in the Corps of Engineers’ Water Control Manual for Modified Roosevelt Dam updated in September 1997 (“Water Control Manual” as defined in Subparagraph 5.31 below). Chapter 7 of the Water Control Manual contains the Water Control Plan which describes how SRP was to operate Modified Roosevelt Dam (“Water Control Plan” as defined in Subparagraph 5.32 below). Under the Water Control Plan, SRP is required to evacuate water entering the Flood Control Space within twenty (20) days after such water first enters the Flood Control Space.

- 2.5. Section 7-14(c) of the Water Control Plan contemplates planned instances which allow deviations from normal regulation. Under the provisions of Section 7-14(c) of the Water Control Plan and Section 7 of the Water Control Agreement, SRP, Reclamation, and the Corps of Engineers developed the parameters of a planned deviation wherein SRP, among other things, is authorized to extend the evacuation period for water entering the first five feet of the Flood Control Space from twenty (20) days to one hundred and twenty (120) days, beginning in calendar year 2023, for three out of five consecutive years (“Temporary Deviation Plan” as defined in Subparagraph 5.27 below).
- 2.6. The Parties executed an agreement entitled “Agreement to Share Costs Associated with Seeking to Obtain Approval for the Operation of the Flood Control Space in Modified Roosevelt Dam Under a Temporary Deviation to the Water Control Plan among Various Participating Entities, and the Salt River Project Agricultural Improvement and Power District” dated October 12, 2021 (“Cost Share Agreement” as defined in Subparagraph 5.5 below) to determine, among other things, the amount of funding contributed by each Party to pay the costs associated with development and approval of the Temporary Deviation Plan.
- 2.7. The Corps of Engineers and Reclamation have issued or will issue a decision document under the National Environmental Policy Act authorizing the Temporary Deviation Plan at Modified Roosevelt Dam as contemplated under Section 7-14(c) of the 1997 Water Control Manual (“Temporary Deviation Authorization”).

- 2.8. The purpose of this Agreement is to describe (1) how SRP will operate the Flood Control Space under the Temporary Deviation Plan, (2) how SRP will evacuate and deliver Temporary Deviation Water from the Temporary Deviation Space to the Parties, and (3) the fees each Participating entity shall pay during the Temporary Deviation Period.

3. AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

4. INCORPORATION OF RECITALS:

The recitals listed above are hereby incorporated into and expressly made part of this Agreement.

5. DEFINITIONS:

The following terms, when used with initial capitalization, whether in singular or plural, shall have the meaning specified as follows:

- 5.1. ADWR: Arizona Department of Water Resources.
- 5.2. Authorized Representatives: Representatives of the Parties appointed to administer the provisions of this Agreement.
- 5.3. Calendar Year: The calendar years beginning January 1 and ending December 31 of each year during the term of this Agreement.
- 5.4. Corp of Engineers: United States Army Corp of Engineers which is authorized under Section 7 of the Flood Control Act of 1944 to prescribe regulations for the use of the Flood Control Space in Modified Roosevelt Dam allocated for flood control purposes.

- 5.5. Cost Share Agreement: The agreement among SRP and the Participating Entities entitled "Agreement to Share Costs Associated with Seeking to Obtain Approval for the Operation of the Flood Control Space in Modified Roosevelt Dam Under a Temporary Deviation to the Water Control Plan among Various Participating Entities and the Salt River Project Agricultural Improvement and Power District" dated October 12, 2021 wherein the parties agreed to share costs to develop the Temporary Deviation as provided in the Cost Share Agreement. The Cost Share Agreement is included as Exhibit 5.5.
- 5.6. Effective Date: The date this Agreement becomes effective as described in Subparagraph 7.1.
- 5.7. Evacuation Deadline: The last day and time that water must be evacuated from the Temporary Deviation Space under a Temporary Deviation Event. The Evacuation Deadline shall be set as 11:59 p.m. on the day that is one hundred and twenty days (120) from when water first enters the Temporary Deviation Space under a Temporary Deviation Event. For instance, if water first enters the Temporary Deviation Space at 9:21 a.m. on March 3rd of a Calendar Year, the Evacuation Deadline shall be 11:59 p.m. on July 1 of the same Calendar Year.
- 5.8. Execution Date: The date all Parties have executed this Agreement as described in Subparagraph 7.1.
- 5.9. Flood Control Space: Reservoir space behind Modified Roosevelt Dam corresponding to the approximately 24 feet of elevation from 2150.78 feet above mean sea level to 2174.87 feet above mean sea level. The Flood Control Space is operated by SRP under the Water Control Agreement with the Corp of Engineers and Reclamation.
- 5.10. Granite Reef: Granite Reef Diversion Dam.
- 5.11. Joint Use Agreement: Agreement among the District, Association, and the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe entitled "Agreement Concerning Beneficial Use of Water in Temporary Active Conservation Capacity at Modified Roosevelt Dam among the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users'

Association and the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe” dated February 18, 1994.

- 5.12. Modified Roosevelt Dam: Theodore Roosevelt Dam as modified under Plan 6 to increase the height approximately 77 feet.
- 5.13. Modified Roosevelt Dam Operating Agreement: Agreement entitled “Operating Agreement for Additional Active Conservation Capacity at Modified Theodore Roosevelt Dam among The Salt River Project Agricultural Improvement and Power District, Salt River Valley Water Users’ Association, United States Bureau of Reclamation, Flood Control District of Maricopa County, and the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe dated December 14, 1993 that authorized and provided for SRP’s operations of Modified Roosevelt Dam as described in such agreement.
- 5.14. Modified Roosevelt Reservoir: The reservoir behind Modified Roosevelt Dam.
- 5.15. Modified Roosevelt Reservoir Inflows: Inflows from Tonto Creek and the Salt River that enter Modified Roosevelt Reservoir.
- 5.16. Participating Entities: Cities of Avondale, Chandler, Glendale, Mesa, Peoria, Phoenix, Scottsdale, and Tempe; Town of Gilbert; Roosevelt Water Conservation District; Buckeye Water Conservation and Drainage District; Roosevelt Irrigation District; the Salt River Pima-Maricopa Indian Community; and Freeport Minerals Corporation.
- 5.17. Reclamation: United States Bureau of Reclamation.
- 5.18. Salt River Reservoir System: The system of four dams on the Salt River upstream of the confluence with the Verde River and their associated reservoirs that are operated by SRP.
- 5.19. Spill Conditions: The conditions described in Sections 4.32, 7.4, and 7.6 of the Modified Roosevelt Dam Operating Agreement under which SRP delivers spill water to the entities in Appendix 1 of that agreement (including to certain Participating Entities) where such water does not count against their respective contractual entitlements. These sections are shown on Exhibit 5.19.

- 5.20. SRP Deliveries: SRP water deliveries, including those from the Salt River Reservoir System, to SRP shareholders and other entities under SRP's governing documents and contracts.
- 5.21. Temporary Deviation Account: An account for each Participating Entity to track apportionment and delivery of Temporary Deviation Water during a Temporary Deviation Event.
- 5.22. Temporary Deviation Account Administrative Fee: Fee paid by Participating Entities to SRP as described in Subparagraph 14.2.
- 5.23. Temporary Deviation Account Creation Fee: Fee paid by Participating Entities to SRP as described in Subparagraph 14.1.
- 5.24. Temporary Deviation Authorization: The decision document issued by the Corps of Engineers under the National Environmental Policy Act and as contemplated by Section 7-14(c) of the Water Control Plan and Section 7 of the Water Control Agreement authorizing the Temporary Deviation Plan. The Temporary Deviation Authorization is included as Exhibit 5.24.
- 5.25. Temporary Deviation Event: An event to regulate water in the Flood Control Space at Modified Roosevelt Dam under which SRP must evacuate water entering the Temporary Deviation Space within one hundred and twenty days (120) of such water first entering such space.
- 5.26. Temporary Deviation Period: Five (5) consecutive year period under which SRP may declare a Temporary Deviation Event in three (3) of those five (5) years.
- 5.27. Temporary Deviation Plan: A planned deviation in flood control operations as approved by the Corps of Engineers that authorizes SRP to declare one (1) Temporary Deviation Event per year, in three (3) out of five (5) years during the Temporary Deviation Period.
- 5.28. Temporary Deviation Space: Reservoir space behind Modified Roosevelt Dam constituting the first five (5) feet of the Flood Control Space as generally illustrated in Exhibit 5.28.

- 5.29. Temporary Deviation Water: Water that SRP evacuates from the Temporary Deviation Space during a Temporary Deviation Event.
- 5.30. Water Control Agreement: The agreement among Reclamation, the Salt River Project Agricultural Improvement and Power District and the Corp of Engineers entitled "Water Control Agreement (WCA) among the Bureau of Reclamation (USBR), the Salt River Project Agricultural Improvement and Power District (SRP), and the Corps of Engineers (COE)" dated November 5, 1996 which authorized SRP's operations of Modified Roosevelt Dam for flood control and other purposes under the Water Control Plan.
- 5.31. Water Control Manual: The Water Control Manual entitled "Water Control Manual, Modified Roosevelt Dam (Theodore Roosevelt Dam), Salt and Gila Rivers, Arizona" dated September 1997 and prepared by the Corps of Engineers which contains the Water Control Plan in Chapter 7 which describes how SRP shall operate Modified Roosevelt Dam for flood control and other purposes.
- 5.32. Water Control Plan: Chapter 7 of the Water Control Manual which describes how SRP shall operate Modified Roosevelt Dam for flood control and other purposes.

6. SCOPE:

This Agreement will describe (1) how SRP will operate the Flood Control Space under the Temporary Deviation Plan, (2) how SRP will evacuate and deliver Temporary Deviation Water from the Temporary Deviation Space to the Parties, and (3) the fees each Participating entity shall pay during the Temporary Deviation Period.

7. EFFECTIVE DATE AND TERM OF AGREEMENT:

- 7.1. This Agreement shall become effective upon: (1) execution by the Parties ("Execution Date"); and (2) approval of the Temporary Deviation Plan by the Corps of Engineers by issuance of Temporary Deviation Authorization ("Effective Date").
- 7.2. This Agreement shall terminate on the earlier of the following:

7.2.1. Date the third Temporary Deviation Event concludes, including, final delivery of Temporary Deviation Water or at the expiration of the 120 days, whichever occurs first, and upon receipt of monies owed under Paragraph 14; and

7.2.2. Date the Temporary Deviation Period concludes, including, final delivery of Temporary Deviation Water or at the expiration of the 120 days, whichever occurs first, and upon receipt of monies owed under Paragraph 14 for the last Temporary Deviation Event.

8. AUTHORIZED REPRESENTATIVES:

Within thirty (30) days after execution of this Agreement, each Party shall designate in writing to the other Parties, an Authorized Representative and an alternate to administer this Agreement on behalf of the designating Party. Written notice of a change of an Authorized Representative or alternate shall be provided within thirty (30) days of such change. The alternate shall act only in the absence of the Authorized Representative. Neither the Authorized Representatives nor the alternates shall have authority to amend, modify, or supplement this Agreement. Agreements of the Authorized Representatives pursuant to this Agreement shall be in writing and signed by them. Notwithstanding the provisions of Paragraph 21, electronic mail with read receipt requested will be an accepted form of written notice under this Paragraph for designation of Authorized Representatives, alternates, and changes to those designations.

9. EXISTING RIGHTS:

9.1. Nothing in this Agreement shall create, confirm, or adversely affect any Party's rights to the storage, delivery, or use of water from the Gila River System to the extent such rights existed prior to this Agreement.

9.2. The Parties agree that the Temporary Deviation Plan only authorizes SRP to extend the period under which SRP is required to evacuate water from the Flood Control Space and such extension of the evacuation period does not constitute storage of water under Arizona law.

9.3. This Agreement shall not be construed to create, confirm, transfer, forfeit, abandon or otherwise affect water rights under Arizona law.

9.4. Certain Parties to this Agreement are parties to the Joint Use Agreement and those Parties agree that (1) nothing in this Agreement is inconsistent with the

provisions of the Joint Use Agreement, (2) they reserve any rights provided to them under the Joint Use Agreement, and (3) nothing in this Agreement shall modify the Joint Use Agreement.

- 9.5. This Agreement does not modify or amend any rights, privileges, or obligations described in the Modified Roosevelt Dam Operating Agreement.

10. SRP OPERATION OF THE FLOOD CONTROL SPACE UNDER THIS AGREEMENT:

- 10.1. SRP shall operate the Flood Control Space consistent with the Temporary Deviation Plan and this Paragraph 10. Under the Water Control Plan, prior to authorization of the Temporary Deviation, SRP was required to evacuate water entering the Flood Control Space within twenty (20) days after such water entered the Flood Control Space. Under the Temporary Deviation Plan, SRP shall operate the Flood Control Space as follows:

10.1.1. SRP shall continue to evacuate water from the portion of the Flood Control Space above the Temporary Deviation Space within twenty (20) days after such water enters such space.

10.1.2. SRP may declare a Temporary Deviation Event once a year in a maximum of three (3) years during the five (5) year Temporary Deviation Period.

10.1.3. During a Temporary Deviation Event, SRP shall evacuate water entering the Temporary Deviation Space no later than one hundred and twenty (120) days after such water enters the Temporary Deviation Space.

- 10.2. When SRP anticipates that Modified Roosevelt Reservoir water levels and Modified Roosevelt Reservoir Inflows are such that water will begin entering the Flood Control Space, SRP at its sole discretion shall have the authority to declare a Temporary Deviation Event. In the event that SRP declares a Temporary Deviation Event under this Subparagraph 10.2, SRP shall operate such Flood Control Space as provided in Subparagraphs 10.3 through 10.9.

- 10.3. Within five (5) days after declaring a Temporary Deviation Event under Subparagraph 10.2, SRP shall provide notice to the Participating Entities under Paragraph 21 that SRP has declared such Temporary Deviation Event. Included in

its notice under this Subparagraph 10.3, SRP shall provide the date that water first entered the Flood Control Space and the Evacuation Deadline.

10.4. Once water first enters the Flood Control Space under a Temporary Deviation Event, SRP shall operate Modified Roosevelt Dam under Spill Conditions as follows:

10.4.1. SRP shall operate Modified Roosevelt Dam under Spill Conditions starting at the time that water first enters the Flood Control Space during a Temporary Deviation Event and shall continue to operate Modified Roosevelt Dam under Spill Conditions while the elevation of water in Modified Roosevelt Dam is rising; and

10.4.2. SRP shall operate Modified Roosevelt Dam under Spill Conditions while the water occupies areas in the Modified Roosevelt Dam above the Temporary Deviation Space. Once SRP evacuates water occupying the portion of the Flood Control Space above the Temporary Deviation Space as provided in the Water Control Plan (i.e. within twenty (20) days after water first enters such space) Modified Roosevelt Reservoir will no longer be operated under Spill Conditions.

10.4.3. SRP shall account for water deliveries during Spill Conditions as provided in this Subparagraph 10.4 under the Modified Roosevelt Dam Operating Agreement.

10.5. SRP shall calculate the volume of and apportion Temporary Deviation Water to Participating Entities as follows:

10.5.1. SRP shall (1) measure the highest elevation that water levels reach in the Temporary Deviation Space at the point where SRP Deliveries exceed inflows into the Salt River Reservoir System and (2) calculate such volume and apportion such water to the Participating Entities as Temporary Deviation Water under Subparagraph 11.1.

10.5.2. If additional precipitation events occur during a Temporary Deviation Event and additional water enters the Temporary Deviation Space, such water volume will be calculated and apportioned to the Participating

Entities using the percentages described in Subparagraph 11.1 and under the conditions described in Subparagraph 10.4.

- 10.6. SRP shall deliver the Temporary Deviation Water to the Participating Entities as provided in Paragraph 12.
- 10.7. SRP shall evacuate all unused Temporary Deviation Water from the Temporary Deviation Space prior to the Evacuation Deadline as provided in Subparagraph 11.2.
- 10.8. The Temporary Deviation Event shall end upon the Evacuation Deadline.
- 10.9. During a Calendar Year when SRP has not declared a Temporary Deviation Event under Subparagraph 10.2, SRP shall operate Modified Roosevelt Dam under the Water Control Plan before the Temporary Deviation Plan was authorized under the Temporary Deviation Authorization.

11. TEMPORARY DEVIATION WATER APPORTIONMENT:

- 11.1. SRP shall calculate the total volume of Temporary Deviation Water entering the Temporary Deviation Space during the Temporary Deviation Event as provided in Subparagraph 10.5 and shall apportion such volume to the Parties according to the percentages provided in the following table:

Parties	Percentage of Temporary Deviation Water
Avondale	7.83%
Chandler	5.06%
Gilbert	3.68%
Glendale	5.06%
Mesa	4.42%
Peoria	2.30%
Phoenix	18.41%
RID	10.13%
Scottsdale	2.49%

Tempe	2.49%
RWCD	10.51%
BWCDD	4.60%
SRPMIC	5.52%
Freeport	2.76%
SRP	14.73%

The Parties acknowledge and agree that this Agreement is temporary in nature and the percentages identified in the table above may be revisited in the event subsequent agreements are executed for the delivery of water entering the Flood Control Space after the end of the Temporary Deviation Period.

- 11.2. Any unused Temporary Deviation Water remaining at the end of a Temporary Deviation Event will be evacuated on the last day of such event and used to meet SRP Deliveries.

12. PARTICIPATING ENTITIES ORDERING AND SRP DELIVERY OF TEMPORARY DEVIATION WATER:

- 12.1. Participating Entities shall order the Temporary Deviation Water by requesting SRP deliver such water per the schedule determined under Subparagraph 12.2. Such request shall be made under the notice provisions in Subparagraph 21.
- 12.2. SRP and each Participating Entity shall mutually agree on a schedule for SRP to deliver the Temporary Deviation Water to each Participating Entity prior to the Evacuation Deadline. Participating Entities may order Temporary Deviation Water during a Temporary Deviation Event by requesting delivery prior to five (5) days before the end of the Temporary Deviation Event.
- 12.3. Except as provided in this Subparagraph 12.3, SRP shall deliver and transport Temporary Deviation Water to Participating Entities on a mutually agreed upon schedule and under the applicable delivery agreement. SRP water delivery obligations to shareholders and contractors of the Salt River Valley Water Users' Association shall take priority over delivery of Temporary Deviation Water if any delivery capacity limitations arise. SRP agrees to waive any applicable transportation fees under applicable agreements during the term of this

Agreement. The Parties acknowledge that this Agreement is temporary in nature and such waiver of transportation fees by SRP may be revisited in the event subsequent agreements are executed for the delivery of water entering the Flood Control Space.

- 12.4. River losses shall be deducted from the Temporary Deviation Water delivered to each Participating Entity at an amount of 6.3 percent at the time of scheduled delivery, which is deemed for the purposes of the Agreement to be the amount of water lost through transmission from Modified Roosevelt Dam to Granite Reef Dam. Participating entities shall not be charged for transmission losses between Granite Reef Dam and the point of delivery. River losses within SRP's water delivery system below Granite Reef Dam shall be revisited if a long-term program is developed for water entering the Flood Control Space.
- 12.5. SRP maintains the right and obligation to operate the Salt River Reservoir System in accordance with the objectives identified in Paragraph 7 of the Modified Roosevelt Dam Operating Agreement. SRP may make deliveries of Temporary Deviation Water to the Participating Entities from any water source in accordance with those objectives notwithstanding the definition of Temporary Deviation Water under this Agreement.

13. WATER ACCOUNTING AND REPORTING:

- 13.1. SRP shall provide water accounting for the total volume of Temporary Deviation Water entering the Temporary Deviation Space as described in Subparagraph 10.5, apportioned to Participating Entities under Subparagraph 11.1, and delivered to Participating Entities under Paragraph 12.
- 13.2. During a Temporary Deviation Event, SRP shall send a preliminary estimate to the Participating Entities within ten (10) days, or as otherwise agreed upon by the Parties, after the initial volume of Temporary Deviation Water is determined under Subparagraph 10.5 including the initial amount of Temporary Deviation Water apportioned to each Participating Entity under Subparagraph 11.1 and shall send updated reports at the end of each month during a Temporary Deviation Event. Reports related to Temporary Deviation Water will be incorporated into existing SRP reporting practices.

- 13.3. SRP shall send updated reports at the end of each month during the Temporary Deviation Period to the Participating Entities which will include (1) the information described in Subparagraph 13.2, (2) the total volume of Temporary Deviation Water entering the Temporary Deviation Space as described in Subparagraph 10.5, (3) the amount of Temporary Deviation Water ordered and delivered by SRP to the Participating Entities during the reporting period, and (4) the Evacuation Date.

14. ADMINISTRATIVE FEES:

- 14.1. Each Participating Entity shall pay to SRP a one-time initial Temporary Deviation Account Creation Fee not to exceed three thousand two hundred fifty dollars (\$3,250.00) for creation of accounts to track volumes and delivery of Temporary Deviation Water billed at execution of this Agreement.
- 14.2. In a year that SRP declares a Temporary Deviation Event, Participating Entities shall pay an administrative fee of four thousand four hundred and two dollars (\$4,402), adjusted annually to account for inflation or other cost changes, for that year to administer the water accounting and reporting for the Temporary Deviation Event. Beginning January 1, 2022, and at each January 1 thereafter, the fee identified in this Subparagraph 14.2 shall be adjusted by the percent change (calculated to the nearest one-hundredth percent) in the Department of Commerce's Price Index for the Gross Domestic Product ("Index") measured from third quarter to third quarter. For purposes of the initial annual adjustment, the Index shall be calculated using the third quarter of 2021 as the base.
- 14.3. The Parties acknowledge that the Temporary Deviation Plan is temporary in nature and in the event such plan is developed into a longer-term program, the Parties shall revisit the fees described in this Paragraph 14.

15. BILLING AND PAYMENT:

- 15.1. SRP shall bill the Participating Entities for the Administrative Fees owed to SRP under Paragraph 14 on or before the thirtieth day after such fees are accrued (or if such a day is not a business day, on the next succeeding business day).

- 15.2. Each Participating Entity shall pay such bill within thirty (30) days following SRP issuing such bill, or if such a day is not a business day, on the next succeeding business day.
- 15.3. Any bills not paid when due shall be delinquent and shall bear interest at the Wall Street Journal Prime Rate, on the date the bill was due plus 2% (Wall Street Journal Prime Rate plus 2%) per annum from the date when the bill was due until the bill is paid (including any accrued interest) in full. In the event the Wall Street Journal no longer publishes the Wall Street Journal Prime Rate, the Authorized Representatives shall select an appropriate substitute.
- 15.4. In the event any portion of any bill is disputed, the disputed amount shall be paid under protest when due and shall be accompanied by a written statement indicating the basis for the protest. If the protest is found to be valid, the Participating Entity shall be refunded any overpayment plus interest, accrued at the rate set forth in Subparagraph 15.3, prorated by days from the date payment was credited to the Participating Entity to the date the refund check is mailed.
- 15.5. In the event any delinquent amount is not paid by the Participating Entity within thirty (30) days after receipt by the Participating Entity of written notice by SRP to the Participating Entity of the delinquency and the remedies available to SRP under this Agreement if the delinquent amount is not paid, SRP shall have the right, without liability of any kind, to suspend the delivery of Temporary Deviation Water so long as the said amount remains unpaid. Nothing herein shall limit the rights of SRP to use any other available legal remedy to effect collection of said amounts.

16. USE OF TEMPORARY DEVIATION WATER:

- 16.1 Parties may directly use, share among other Parties to this Agreement, exchange, or store underground Temporary Deviation Water pursuant to Arizona law and any applicable water delivery and use agreements.
- 16.2 Parties may share Temporary Deviation Water among other Parties to this Agreement during the Temporary Deviation Event for use within their respective service territories.

- 16.3. If Parties seek to store their portion of the Temporary Deviation Water underground to create long-term storage credits pursuant to Arizona law. Parties may trade, assign, or transfer such credits pursuant to Arizona law; provided, however, that for purposes of this Agreement, the Parties agree that they may only trade, assign, or transfer such long-term storage credits among other Parties to this Agreement. SRP intends that it will use such long-term storage credits for the benefit of its shareholders.

17. WATER QUALITY AND INDEMNITY:

- 17.1. SRP makes no representation or warranty as to the quality of Temporary Deviation Water delivered under Paragraph 12 of this Agreement and the Participating Entities assume the responsibility for purifying or otherwise treating the Temporary Deviation Water delivered under this Agreement to meet present or future water quality standards established by federal, state, or local laws or regulations.
- 17.2. Each Party shall assume liability for its own negligence arising out of its action or inaction, whether negligent or intentional, and each Party shall indemnify the other Parties against any damages the non-responsible Parties incur as a result of the responsible Party's action or inaction.

18. DISPUTE RESOLUTION; CHOICE OF LAW:

- 18.1. Any dispute under this Agreement shall first be submitted to the Authorized Representatives for resolution. If the matter cannot be resolved by the Authorized Representatives, any Party may submit the matter to the SRP General Manager and the chief operation officers of the Parties involved in the dispute. If the matter cannot be resolved by the SRP General Manager, any Party may bring suit upon the matter, provided however, that it is expressly agreed that the venue shall only be in Maricopa County Superior Court, its successor court. In the event SRPMIC is a party to any suit on the matter under this Subparagraph 18.1, then the parties agree that such suit shall be in a state or federal court of competent jurisdiction.
- 18.2. This Agreement shall be governed and construed in accordance with the laws of the State of Arizona and any applicable federal law.

- 18.3. In the event of any future dispute or action arising under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred therein, including expert witness fees.
- 18.4. Pending the resolution of a dispute, the Parties shall proceed, to the extent legally permissible, in a manner consistent with this Agreement, and shall make payments required in accordance with the applicable provisions of this Agreement. Amounts paid by a Party under this Subparagraph 18.4 during the pendency of such dispute shall be subject to refund and adjustment upon a final resolution of any dispute involving an amount due.
- 18.5. Nothing contained in this Agreement shall be construed to constitute a waiver of any aspect or portion of sovereign immunity of the SRPMIC, and/or its affiliates, departments, programs, enterprises, or subdivisions. If the SRPMIC or the United States on behalf of SRPMIC successfully asserts its sovereign immunity from suit in any action to enforce the terms of this Agreement, SRP shall be under no obligations related to delivery of any Temporary Deviation Water to SRPMIC under Subparagraph 10.6 and Paragraph 12.

19. UNCONTROLLABLE FORCES:

No party shall be considered to be in default in the performance of any of its obligations hereunder if failure of performance is 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 herein shall be construed so as to require either Party to settle any strike or labor dispute in which it is involved. Either party rendered able to fulfill any obligation hereunder by reason of an uncontrollable force shall exercise due diligence to remove such inability.

20. RECLAMATION REFORM ACT:

In no event shall actions taken under this Agreement subject the Association or its shareholders to provisions of the Reclamation Reform Act of 1982 ("Reclamation Reform Act"), 43 U.S.C. 390, as amended, and regulations attendant thereto, to which Association would not otherwise have been subjected. In the event a federal agency or other

administrative or judicial entity subjects or purports to subject Association to the Reclamation Reform Act as a result of actions taken under this Agreement, Association shall be relieved of any further obligations hereunder, and this Agreement shall terminate at Association's discretion.

21. NOTICE; CHANGE OF NAME OR ADDRESS:

21.1. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been received either when delivered or on the fifth (5th) business day following mailing, by registered or certified mail, postage prepaid, return receipt requested, whichever is earlier, addressed as set forth below:

21.1.1. If to SRP:

Salt River Project Agricultural Improvement and Power District
c/o Corporate Secretary
P.O. Box 52025
Phoenix, AZ 85072-2205

with a copy to:

General Manager and CEO
Salt River Project Agricultural Improvement and Power District
P.O. Box 52025
Phoenix, AZ 85072-2205

21.1.2. If to the City of Avondale:

City of Avondale
c/o City Manager
11465 W. Civic Center Drive
Avondale, AZ 85323

with a copy to:

21.1.3. If to the City of Chandler:

City of Chandler
c/o Water Resource Manager
PO Box 4008, M.S. 905
Chandler, AZ 85244-4008

with a copy to:

Chandler City Attorney
P O Box 4008, MS 602
Chandler, AZ 85225

21.1.4. If to the City of Glendale:

City of Glendale
c/o Water Resource Manager
5850 West Glendale Avenue, Ste. 431
Glendale, AZ 85301

with a copy to:

21.1.5. If to the City of Mesa:

City of Mesa
c/o Water Resources Department Director
PO Box 1466
Mesa, AZ 85211

with a copy to:

21.1.6. If to the City of Peoria:

City of Peoria
c/o Water Services Director
8401 W. Monroe Street
Peoria, AZ 85345

with a copy to:

City Attorney
City of Peoria
P.O. Box 4038
Peoria, AZ 85380-4038

21.1.7. If to the City of Phoenix:
Water Resources Management Advisor
City Manager's Office
City of Phoenix
200 West Washington Street, 12th Floor
Phoenix, Arizona 85003-1611

With a copy to:

City Attorney
City of Phoenix
200 West Washington Street, 13th Floor
Phoenix, Arizona 85003-1611

21.1.8. If to the City of Scottsdale:

City of Scottsdale – Scottsdale Water
c/o Executive Director
9312 N. 94th Street
Scottsdale, AZ 85258

with a copy to:

21.1.9. If to the City of Tempe:

City of Tempe
c/o Municipal Utilities Director
31 E. 5th Street
Tempe, AZ 85281

with a copy to:

Tempe City Attorney's Office
21 E. Sixth Street, Suite 201
Tempe, AZ 85281

21.1.10. If to the Town of the Gilbert:

Town of Gilbert
c/o Town Manager
50 E. Civic Center Drive
Gilbert, AZ 85296

with a copy to:

Water Resource Manager
50 E. Civic Center Drive
Gilbert, AZ 85296

21.1.11. If to Roosevelt Water Conservation District:

Shane Leonard, General Manager
Roosevelt Water Conservation District
PO Box 100
Higley, AZ 85212

with a copy to:

21.1.12. If to the Buckeye Water Conservation and Drainage District:

Buckeye Water Conservation and Drainage District
c/o General Manager
205 Roosevelt
Buckeye, AZ 85326

with a copy to:

21.1.13. If to the Salt River Pima-Maricopa Indian Community:

Salt River Pima-Maricopa Indian Community:
c/o Public Works Director
1005 E. Osborn Road
Scottsdale, AZ 85256

with a copy to:

21.1.14. If to the Roosevelt Irrigation District:

Roosevelt Irrigation District
103 W. Baseline Road
Buckeye, AZ 85326

with a copy to:

21.1.15. If to Freeport Minerals Corporation:

Freeport Minerals Corporation
c/o Vice President
333 N. Central Avenue
Phoenix, AZ 85004

with a copy to:

21.2. Any Party may change the addressee or address to which communications or copies are to be sent by giving notice of such change of addressee.

22. SEVERABILITY:

Should any part of this Agreement be declared, in a final decision by a court or tribunal of competent jurisdiction, to be unconstitutional, invalid, or beyond the authority of a Party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder

of this Agreement, absent the excised portion, can be reasonably interpreted to give effect to the intentions of the Parties.

23. WAIVER:

The failure of any Party to insist on any one or more instances upon strict performance of any of the obligations of the other pursuant to this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of the performance of any such obligation or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

24. BINDING AGREEMENT:

All of the provisions of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their heirs, successors and assigns; provided, however, that none of the Parties shall assign its rights and obligations under this Agreement to another entity without the written consent of the other Parties. Such consent to assignment shall not, however, be unreasonably withheld, conditioned, or delayed.

25. NO THIRD-PARTY BENEFICIARIES:

This Agreement is solely for the benefit of the Parties and does not create nor shall it be construed to create rights in any third party. No third party may enforce the terms and conditions of this Agreement.

26. NO PARTNERSHIP AND NO JOINT VENTURE:

Nothing contained in this Agreement shall be construed as creating a partnership or joint venture between the Parties hereto. The covenants, obligations, and liabilities contained in this Agreement are intended to be several and not joint or collective, and nothing contained herein shall be construed to create an association, joint venture, agency, trust, or partnership, or to impose a trust or partnership covenant, obligation, fiduciary duty, or liability between the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities as provided herein.

27. AUTHORITY:

The undersigned representative of each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Agreement and to legally bind the Party to it.

28. ENTIRE AGREEMENT; MODIFICATION; COUNTERPARTS:

The terms, covenants and conditions of this Agreement constitute the entire Agreement between the Parties, and no understandings or obligations not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the Parties. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[signatures on the following pages]

IN WITNESS WHEREOF, this Agreement was executed by the Parties on the date first hereinabove written.

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

By: _____
Name: David C. Roberts
Title: Associate General Manager
Water Resources

APPROVED AS TO FORM

By: _____
Name: Patrick B. Sigl
Title: Principal Managing Attorney, Water,
Land & Environment

**SALT RIVER VALLEY WATER USERS'
ASSOCIATION**

By: _____
Name: David C. Roberts
Title: Associate General Manager
Water Resources

APPROVED AS TO FORM

By: _____
Name: Patrick B. Sigl
Title: Principal Managing Attorney, Water, Land
& Environment

CITY OF AVONDALE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF CHANDLER

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____ 

Name: Jenny J. Winkler

Title: Assistant City Attorney

CITY OF GLENDALE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF MESA

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF PEORIA

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

CITY OF PHOENIX

ATTEST:

JEFFREY BARTON, City Manager

City Clerk, City of Phoenix

By: _____
Troy Hayes
Director, Water Services Department

APPROVED AS TO FORM:
CRIS MEYER, City Attorney

By: _____
Name: _____
Title: _____

CITY OF SCOTTSDALE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF TEMPE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

TOWN OF GILBERT

By: _____

Name: _____

Title: Water Resource Manager

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

ROOSEVELT WATER CONSERVATION DISTRICT

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

**SALT RIVER PIMA-MARICOPA INDIAN
COMMUNITY**

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

ROOSEVELT IRRIGATION DISTRICT

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

FREEPORT MINERALS CORPORATION

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

**AGREEMENT FOR ACCOUNTING AND DELIVERY OF WATER MADE AVAILABLE IN THE FLOOD
CONTROL SPACE IN
MODIFIED ROOSEVELT DAM UNDER A TEMPORARY DEVIATION
TO THE WATER CONTROL PLAN
AMONG
VARIOUS PARTICIPATING ENTITIES,
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

**Exhibit 5.5
Cost Share Agreement**

**AGREEMENT CONCERNING BENEFICIAL USE OF WATER IN TEMPORARY ACTIVE
CONSERVATION CAPACITY AT MODIFIED ROOSEVELT DAM
AMONG
THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,
THE SALT RIVER VALLEY WATER USERS' ASSOCIATION
AND THE ARIZONA CITIES OF CHANDLER, GLENDALE, MESA, PHOENIX, SCOTTSDALE, AND
TEMPE**

**Exhibit 5.11
Joint Use Agreement**

**AGREEMENT FOR ACCOUNTING AND DELIVERY OF WATER MADE AVAILABLE IN THE FLOOD
CONTROL SPACE IN
MODIFIED ROOSEVELT DAM UNDER A TEMPORARY DEVIATION
TO THE WATER CONTROL PLAN
AMONG
VARIOUS PARTICIPATING ENTITIES,
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

Exhibit 5.24

Temporary Deviation Authorization

**AGREEMENT ACCOUNTING AND DELIVERY OF WATER MADE AVAILABLE IN OF THE FLOOD
CONTROL SPACE IN
MODIFIED ROOSEVELT DAM UNDER A TEMPORARY DEVIATION
TO THE WATER CONTROL PLAN
AMONG
VARIOUS PARTICIPATING ENTITIES,
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

Exhibit 5.28

Temporary Deviation Space