

EXHIBIT “A”

When recorded, return to:

City Clerk
City of Chandler
P. O. Box 4008, Mail Stop 606
Chandler, AZ 85244-4008

**INTERGOVERNMENTAL AGREEMENT FOR
THE CONVEYANCE OF RIGHTS IN THE
NEW RIVER AND AGUA FRIA RIVER UNDERGROUND STORAGE PROJECT**

This Intergovernmental Agreement for the Conveyance of Rights in the New River and Agua Fria River Underground Storage Project (“**Agreement**”) is entered into this ____ day of _____, 2023 (“**Effective Date**”), by and between the City of Chandler, an Arizona municipal corporation (“**Chandler**”), and the City of Avondale, an Arizona municipal corporation (“**Avondale**”). Chandler and Avondale are referred to collectively in this Agreement as “Parties” and each may be referred to individually as a “Party.”

RECITALS

A. Arizona Revised Statutes §§ 11-951 through 11-954 authorize Chandler and Avondale to enter into this Agreement.

B. Chandler and Avondale are parties to and Participants in that certain New River and Agua Fria River Underground Storage Project Intergovernmental Agreement dated August 4, 2004, as amended July 23, 2008 (“**NAUSP Agreement**”), together with the City of Glendale, the City of Peoria, the Salt River Valley Water Users’ Association, and the Salt River Project Agricultural Improvement and Power District.

C. Any capitalized term used in this Agreement and not otherwise defined shall have the meaning given in the NAUSP Agreement. Except as set forth in Section 8 below, to the extent any provision of this Agreement conflicts with the provisions of the NAUSP Agreement, the NAUSP Agreement shall control.

D. The NAUSP Agreement sets forth the terms for the construction, maintenance, operation, and rights in the New River and Agua Fria River Underground Storage Project (“**NAUSP**”) located generally at the northeast corner of Ball Park Boulevard and the alignment for Bethany Home Road in Glendale, Arizona.

E. Under the terms of the NAUSP Agreement, Chandler's Storage Entitlement is 22.8% of the Storage Capacity of the NAUSP.

F. Chandler desires to sell, and Avondale desires to purchase, Chandler's Storage Entitlement equal to 18.0% of the Storage Capacity of the NAUSP, subject to the lease back provisions and other terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and representations set forth in this Agreement, including without limitation the Recitals, Chandler and Avondale agree as follows.

AGREEMENT

1. Incorporation of Recitals. The Recitals set forth above are incorporated as binding terms of this Agreement.

2. Term. Subject to the provisions of Section 8, this Agreement shall remain in effect until:

2.1 Closing as defined in Section 3 of this Agreement; and

2.2 Execution of the Lease as provided in Section 5 of this Agreement.

3. Conveyance of 18% of Chandler's Storage Entitlement to Avondale.

3.1 Not later than June 30, 2023 ("**Closing Date**"), Avondale agrees to pay Chandler the sum of \$5,753,237.13 ("**Purchase Price**") as and for Chandler's Storage Entitlement equal to 18% of the Storage Capacity of the NAUSP.

3.2 Upon receipt of the Purchase Price, Chandler shall provide written confirmation to Avondale and other Participants that the conveyance of Chandler's Storage Entitlement to Avondale as described in this Agreement is final and effective as of the Closing Date ("**Closing**").

3.3 Upon Closing, Chandler shall retain a Storage Entitlement of 4.8% of the Storage Capacity of the NAUSP.

4. Retention of Rights. Chandler shall retain all rights and privileges associated with water stored in the NAUSP by Chandler.

5. Leaseback.

5.1 Commencing on the first day of the month following Closing, Avondale agrees to lease back to Chandler a portion of the Storage Entitlement conveyed under this Agreement under a Temporary Assignment of Declared Firm Lease Capacity in substantially the form attached as Exhibit "A" ("**Lease**").

5.2 Avondale shall lease back to Chandler a Storage Entitlement equal to 8.0% of the Storage Capacity of the NAUSP.

5.3 During the term of the Lease, Chandler's total Storage Entitlement shall be 12.8%.

6. Notices. Unless otherwise specifically provided in this Agreement, or unless written notice of a change of address has been previously given under this Section, all notices, demands or other communication given hereunder shall be in writing and shall be deemed to have been duly delivered upon (A) personal delivery, (B) delivery by a recognized overnight courier (e.g., Federal Express, United Parcel Service) for next business day delivery, or (C) as of the fifth business day after mailing by United States certified mail, postage prepaid, addressed as follows:

To Chandler: Public Works & Utilities Director
City of Chandler
P. O. Box 4008
Mail Stop 905
Chandler, AZ 85244-4008

With a copy to: Chandler City Attorney
P.O. Box 4008
Mail Stop 602
Chandler, AZ 85244-4008

To Avondale: City of Avondale, Arizona
11465 West Civic Center Drive
Avondale, Arizona 85323
Attention: City Manager

7. Indemnification.

7.1 Chandler shall indemnify and defend Avondale and its officers and employees, collectively, against any and all losses, damages, liabilities, deficiencies, claims, actions, judgment, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney fees, relating to, arising out of, or resulting from any third-party claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity or otherwise ("**Claim**"), alleging a breach of this Agreement by Chandler, a negligent or more culpable act or omission of Chandler or any of its representatives (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement, any failure by Chandler to comply with applicable federal, state, or local laws, regulations, or codes in the performance of its obligations under this Agreement, or any Claim arising out of the foregoing conduct by Chandler or its representatives in connection with the performance of its rights or obligations under the NAUSP Agreement prior to the Effective Date of this Agreement and continuing through the Term of this Agreement.

7.2 Avondale shall indemnify and defend Chandler and its officers and employees, collectively, against any and all losses, damages, liabilities, deficiencies, claims, actions, judgment, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney fees, relating to, arising out of, or resulting from any third-party claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity or otherwise (“**Claim**”), alleging a breach of this Agreement by Avondale, a negligent or more culpable act or omission of Avondale or any of its representatives (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement, any failure by Avondale to comply with applicable federal, state, or local laws, regulations, or codes in the performance of its obligations under this Agreement, or any Claim arising out of the foregoing conduct by Avondale or its representatives in connection with the performance of its rights or obligations under the NAUSP Agreement from and after the Effective Date.

7.3 The obligations of the Parties under this Section shall survive the termination of this Agreement and the NAUSP Agreement.

8. Termination. Either Party may terminate this Agreement for cause upon written notice to the other Party. The non-terminating Party shall have ten days after issuance of the notice to remedy the cause for which the notice was issued, after which the Agreement shall terminate. Upon termination and as applicable the Purchase Price shall be refunded, and any Storage Entitlement conveyed under this Agreement shall be returned with notice to the other Participants.

9. Additional Matters.

9.1 This Agreement shall be governed by and construed under the laws of the State of Arizona. This Agreement is subject to the provisions of A.R.S. § 38-511. This Agreement shall be deemed made and entered into in Maricopa County, Arizona.

9.2 Chandler and Avondale each believe that the execution, delivery, and performance of this Agreement comply with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the Parties to do any act in violation of any applicable constitutional provision, law, regulation, code, or charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed Agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to perform all such acts as reasonably requested by the other Party from time to time and to execute all amendments, instruments, and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

9.3 The failure of any Party to exercise any right, power, or remedy given to it under this Agreement, or to insist upon strict compliance with it, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach, nor a

waiver by either Party of its rights at any time to require exact and strict compliance with all of the terms of this Agreement.

9.4 This Agreement constitutes the entire Agreement between Chandler and Avondale with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement. This Agreement may not be changed, modified, or amended, except in writing, signed by all Parties, and any attempt at oral modification of this Agreement shall be void and of no effect. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

9.5 In the event of any dispute between the Parties in connection with this Agreement, the Party prevailing in such action or proceeding (excluding mediation) shall be entitled to recover from the other Party all of its costs and fees, including reasonable attorneys' fees; provided, however, that no such awarded amount shall be payable until (A) the court in question has made a finding that one or the other Party is the "prevailing party" in such proceeding, and (B) a final order of judgment is entered by a court of competent jurisdiction for which any time for appeal has expired without appeal, or where applicable, the mandate of an appellate court of competent jurisdiction shall issue.

9.6 Any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action except in accordance with the terms of this Section.

9.7 It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Chandler and Avondale. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a Party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

9.8 Attached to this Agreement and incorporated by reference is the written determination of each Party's legal counsel that each Party is authorized under the laws of the State of Arizona to enter into this Agreement and that the Agreement is in proper form.

9.9 Each Party agrees to execute and carry out all such further documents, instruments, or acts as reasonably may be necessary to give full effect to this Agreement.

9.10 Chandler shall record a fully executed copy of this Agreement in the Office of the Maricopa County Recorder.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have executed this Agreement on this ____ day of _____, 2023.

CITY OF CHANDLER, an Arizona
municipal corporation

CITY OF AVONDALE, an Arizona
municipal corporation

By _____
Mayor Kevin Hartke

By _____
Mayor Kenneth Weise

ATTEST:

ATTEST:

By _____
City Clerk

By _____
City Clerk

APPROVAL OF THE CHANDLER CITY ATTORNEY

Pursuant to Arizona Revised Statutes § 11-951 through § 11-954, I have reviewed the foregoing intergovernmental agreement between the City of Chandler and the City of Avondale and declare this Agreement to be in proper form and within the powers and authority granted to the City of Chandler under the laws of the State of Arizona.

No opinion is expressed as to the authority of the City of Avondale to enter into this Agreement.

DATED this _____ day of _____, 2022.

Kelly Y. Schwab
Chandler City Attorney

DMG

APPROVAL OF AVONDALE CITY ATTORNEY

Pursuant to Arizona Revised Statutes § 11-951 through § 11-954, I have reviewed the foregoing intergovernmental agreement between the City of Chandler and the City of Avondale and declare this Agreement to be in proper form and within the powers and authority granted to the City of Avondale under the laws of the State of Arizona.

No opinion is expressed as to the authority of the City of Chandler to enter into this Agreement.

DATED this _____ day of _____, 2022.

Nicholle Harris
Avondale City Attorney