

EXHIBIT “B”

When recorded, return to:

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

**AGREEMENT FOR THE TEMPORARY ASSIGNMENT
OF DECLARED FIRM LEASE CAPACITY IN THE
NEW RIVER AND AGUA FRIA RIVER UNDERGROUND STORAGE PROJECT**

This Agreement for the Temporary Assignment of Declared Firm Lease Capacity in the New River and Agua Fria River Underground Storage Project (“**Lease**”) 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 Lease as “Parties” and each may be referred to individually as a “Party.”

RECITALS

A. 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.

B. Any capitalized term used in this Agreement and not otherwise defined shall have the meaning given in the NAUSP Agreement.

C. 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 leasing of 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. Effective _____, 2023, Chandler and Avondale entered into an Intergovernmental Agreement for the Conveyance of Rights in the NAUSP (“**Conveyance IGA**”)

under which Chandler conveyed to Avondale Chandler's Storage Entitlement equal to 18.0% of the Storage Capacity of the NAUSP.

F. Chandler retains a Storage Entitlement of 4.8% of the Storage Capacity of the NAUSP.

G. The Conveyance IGA requires Avondale to lease back to Chandler a Storage Entitlement equal to 8.0% of the Storage Capacity of the NAUSP.

NOW, THEREFORE, in consideration of the mutual promises and representations set forth in this Lease and in the Conveyance IGA, 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. The term of this Lease shall commence on July 1, 2023, and end on December 31, 2026.

3. Retention of Rights. Chandler shall retain all rights and privileges associated with water stored in the NAUSP by Chandler as of the termination of this Lease.

4. Temporary Assignment of Declared Firm Lease Capacity. Avondale agrees to assign to Chandler a Storage Entitlement equal to 8.0% of the Storage Capacity of the NAUSP through calendar year 2026, under the terms and conditions provided in Sections 4.8, 7.4, and 15.3 of the NAUSP Agreement for the temporary assignment of Declared Firm Lease Capacity by one Participant to another. During the term of this Lease, Chandler's total Storage Entitlement shall be 12.8%.

5. Option to Extend. Chandler shall have the option to extend the Term of this Lease for an additional 12 months until December 31, 2027, by providing written notice to Avondale no later than October 2, 2026, of its intent to exercise the option.

6. Price. Chandler shall pay Avondale a percentage of its annual Operating Costs as determined under Section 12 of the NAUSP Agreement that is proportional to the share of Avondale's Firm Lease Capacity assigned to Chandler annually under this Lease. Such price shall be prorated monthly for any period of less than 12 months.

7. 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

8. Additional Matters.

8.1 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.

8.2 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.

8.3 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.

8.4 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.

8.5 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.

8.6 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.

8.7 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.

8.8 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.

8.9 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.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have executed this Lease 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

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By _____
City Attorney *DMG*

By _____
City Attorney