FIRMING WATER DELIVERY AGREEMENT
BETWEEN THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
AND CHANDLER

1. **PREAMBLE:** This Firming Water Delivery Agreement ("Agreement") is made this___________ day of ____________, 2026 between the Central Arizona Water Conservation District ("CAWCD") and City of Chandler ("Chandler") to set forth the terms and conditions for the delivery of Firming Water by CAWCD to Chandler.

2. **RECITALS:**
   2.1. WHEREAS, Chandler holds a CAP M&I Priority subcontract No. 07-XX-30-W0482 including all Amendments ("M&I Subcontract"), a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof.

   2.2. WHEREAS, CAWCD and the United States entered into the Central Arizona Project System Use Agreement ("SUA") dated February 2, 2017, (17-XX-30-W0622), which is attached hereto as Exhibit "B" and by this reference made a part hereof.

   2.3. WHEREAS, Section 3.24 of the SUA defines Firming as satisfying all or a portion of a Long-Term Contract entitlement that has been reduced due to a Water Shortage.

   2.4. WHEREAS, Section 8.1 of the SUA identifies sources of Firming Water as Non-Project Water, including Recovered Water delivered through the CAP System, or Exchange Water.

   2.5. WHEREAS, Firming Water developed by CAWCD may include Non-Project Water or Exchange Water, including Recovered Water delivered or exchanged from long-term storage credits distributed to CAWCD by the Arizona Water Banking Authority ("AWBA").

   2.6. WHEREAS, Firming Water developed by Chandler may include Non-Project Water or Exchange Water made available to CAWCD for delivery through the CAP System.

   2.7. WHEREAS, pursuant to Section 14.4 of the SUA, CAWCD has the authority to collect charges based on estimates of CAWCD's actual expenses for the development and delivery of Firming Water provided by CAWCD.

   2.8. WHEREAS, pursuant to Section 8.3 of the SUA, a Firming Agreement between CAWCD and a non-Federal Long-Term Contractor is required to set forth the terms and conditions for which CAWCD will deliver, and the Long-Term Contractor will accept, Firming Water.

   2.9. WHEREAS, this Agreement constitutes a Firming Agreement under Section 8.3 of the SUA.

   2.10. NOW THEREFORE, Chandler and CAWCD are entering into this Agreement to define the delivery terms and conditions of Firming Water that may be requested by, and available to, Chandler.

3. **DEFINITIONS:** Unless stated otherwise, capitalized terms in this Agreement shall have the same meaning as defined in the SUA.

3.1. "Annual CAP Water Delivery Schedule" means the annual water delivery schedule submitted by Chandler to CAWCD pursuant to Article 4.4 of Chandler's M&I Subcontract.

3.2. "CAWCD Firming Rate" means the rate established by the CAWCD Board of Directors consistent with Section 14.4 of the SUA, based on CAWCD's expenses for the development and delivery of Firming Water. These costs include, but are not limited to, partner incentive payments, well rehabilitation, well operation and maintenance, non-CAP wheeling fees, and other Recovery fees, delivery costs and capital costs including infrastructure development and treatment. The CAWCD Firming Rate will be considered, established and published by the CAWCD Board of Directors.

4. **TERM:** This Agreement shall be effective when executed by the CAWCD and Chandler and the initial term of this Agreement expires on December 31 of the year in which it is executed. This Agreement will be automatically renewed for successive one-year terms unless either party notifies the other by October 1 of any year that it does not wish to renew the Agreement for the following year.

5. **FIRMING WATER DEVELOPED BY CAWCD**

5.1. Firming Water developed and made available for delivery through the CAP System by CAWCD will be made available to Chandler in accordance with the Annual CAP Water Delivery Schedule.

5.2. The ability of CAWCD to develop and deliver Firming Water through the CAP System may be constrained by actions of third parties, including the AWBA, the Arizona Department of Water Resources, and parties that CAWCD has contracted with for the development of Firming Water.

5.3. In the event that CAWCD determines that it will likely be unable to fulfill some or all of a request for delivery of Firming Water, CAWCD will provide notice to Chandler, and the AWBA as applicable, as soon as practicable after that determination.

6. **FIRMING WATER DELIVERED TO CHANDLER**

6.1. Pursuant to the terms of the SUA, Firming Water developed by Chandler may be made available for delivery via the CAP System through a CAWCD Wheeling Contract, Reclamation Wheeling Contract, Federal Arrangement, Exchange Implementation Agreement, or this Agreement.

6.2. In the event that Chandler has developed Exchange Water exclusively for Firming, this Agreement shall satisfy the requirement for an Exchange Implementation Agreement under Article 9 of the SUA.

6.3. In the event that Chandler has developed a Non-Project Supply and chooses to use the supply exclusively for Firming, and Chandler has not otherwise entered into a CAWCD Wheeling Contract, Reclamation Wheeling Contract, or Federal Arrangement, this Agreement shall serve as the water delivery contract for the Non-Project Supply, provided however that Chandler has also obtained all necessary environmental clearances and entered into any separate agreement required by CAWCD and/or the

United States to ensure compliance with the water quality standards established under Article 12 of the SUA.

7. SCHEDULING AND DELIVERY

7.1. On or before October 1 of the year preceding a potential water shortage year in which Chandler desires to receive Firming Water, Chandler shall identify in its Annual CAP Water Delivery Schedule the desired amounts of Firming Water to be delivered during each month of the following year, and the point(s) of delivery.

7.2. Pursuant to Section 11.2 of the SUA, Firming Water shall carry the scheduling priority of the Project Water it replaces.

7.3. Delivery of Firming Water by CAWCD is dependent on the delivery capability of the CAP System, and subject to the provisions of the Repayment Contract and Stipulation, and the CAP System Use Agreement. CAWCD will deliver Firming Water to Chandler in an amount, and at a water service charge, to be determined in accordance with the terms of this Agreement.

7.4. Pursuant to Section 10.2.2 of the SUA, Firming Water shall not be assessed losses as it is transported through the CAP System.

8. PAYMENT

8.1. If the Firming Water is Non-Project Water made available by Chandler for transportation via the CAP System, Chandler shall pay the established CAWCD rate for Fixed OM&R and Pumping Energy Rate for each acre-foot that is transported and delivered.

8.2. If the Firming Water is Exchange Water made available by Chandler, the Long-Term Contractor that is exchanging their Project Water shall pay the established CAWCD rate for Fixed OM&R and Pumping Energy Rate for each acre-foot that is delivered.

8.3. If the Firming Water is developed and made available for delivery through the CAP System by CAWCD, Chandler shall pay the Firming Rate established by CAWCD for each acre-foot that is scheduled and delivered to the Party.

8.4. Invoicing and payment for Firming Water shall follow the same payment procedures as defined in the M&I Subcontract Article 5.

9. CONDITIONS OF USE

9.1. Chandler agrees that its receipt and use of Firming Water shall be subject to the same terms and conditions as set forth in the following provisions of Chandler's M&I Subcontract: Articles 4.3, 4.5, 4.6, 4.8, 4.9, 4.10, 6.1, 6.3, 6.4, 6.5, 6.6, 6.9, 6.10, 6.11 and 6.13.

9.2. In no event shall the volume of Firmed Water delivered to Chandler for the purpose of firming Chandler's M&I Subcontract, in combination with any Long-Term Storage Credits transferred by the AWBA to Chandler for the purpose of firming Chandler's M&I Subcontract, exceed the reduction to Chandler's M&I Subcontract due to Water Shortage.

10. WATER QUALITY

10.1. CAWCD does not warrant the quality of Firming Water delivered to Chandler pursuant to this Agreement and CAWCD is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any water transported through the CAP System. Chandler assumes all responsibility for purifying or otherwise treating Firming Water received to meet applicable water quality standards established by federal, state or local authorities. Chandler waives its rights to make a claim against the United States, CAWCD or another Long-Term Contractor for the quality of Firming Water.

11. GENERAL PROVISIONS

11.1. Interpretation. This Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona and any applicable federal laws, without regard to its conflict of laws provisions. Any action to resolve any dispute regarding this Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.

11.2. Third Party Rights. The Parties do not intend to create rights in or to grant remedies to any third party or others as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established thereunder.

11.3. Assignment. No Party may assign, delegate, or otherwise transfer this Agreement, in interest therein, or the Party's rights or obligations under this Agreement without the prior written consent of the other Party.

11.4. Amendments. This Agreement may be modified, amended or revoked only by the express written agreement of the Parties hereto.

11.5. Waiver. No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving Party. The waiver by either Party of a breach of any term, covenant, or condition in this Agreement shall not be deemed a waiver of any other term, covenant, or condition of this Agreement.

11.6. Severability. Any determination by any court of competent jurisdiction that any provision of this Agreement is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Agreement; provided, however, that the remainder of this Agreement, absent the excised portion, can be reasonably interpreted to give effect to the intentions of the Parties.

11.7. Captions. All captions, titles, or headings in this Agreement are used for the purpose of reference and convenience only and do not limit, modify, or otherwise affect any of the provisions of this Agreement.

11.8. Notices. Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate Party at the following address (or at any other address as a Party may hereafter designate by written notice given as required by this paragraph):

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

CAWCD: **CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: ______________________
Brenda Burman, General Manager

Approved to Form

____

CHANDLER: **CITY OF CHANDLER**

By: ______________________
Kevin Hartke, Mayor

ATTEST:

____
City Clerk

Approved to Form

____
City Attorney gw

Exhibit A

Subcontract No. 07-XX-30-W0482

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

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

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this 25th day of May, 2007, in pursuance generally of 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), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the CITY OF CHANDLER, hereinafter referred to as the "Subcontractor," with its principal place of business in Chandler, Arizona;

EIMS COPY

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

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

WHEREAS, the United States and the Contractor entered into Contract No. 14-06-W-245, Amendment No. 1, dated 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 the Contractor agrees to repay to the United States the reimbursable costs of the Central Arizona Project allocated to the Contractor; and

WHEREAS, the Subcontractor is in need of a water supply and desires to subcontract with the United States and the Contractor for water service from water supplies available under the Central Arizona Project; and

WHEREAS, upon completion of the Central Arizona Project, water shall be available for delivery to the Subcontractor;

NOW THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is agreed as follows:

3. DEFINITIONS:

Definitions included in the Repayment Contract are applicable to this subcontract; provided, however, that the terms "Agricultural Water" or "Irrigation Water" shall mean water used for the purposes defined in the Repayment Contract on tracts of land operated in units of more than 5 acres. The first letters of terms so defined are capitalized herein. As heretofore indicated, a copy of the Repayment Contract is attached as Exhibit "A." In addition, the following definitions shall apply to this subcontract:

(a) "Available CAP Supply" shall mean for any given Year all Fourth Priority Water available for delivery through the Central Arizona Project, water available from CAP dams and reservoirs other than Modified Roosevelt Dam, and return flows captured by the Secretary for CAP use.

(b) "Fourth Priority Water" shall mean Colorado River water available for delivery within the State of Arizona for satisfaction of entitlements: (1) pursuant to contracts, Secretarial reservations, perfected rights, and other arrangements between the United States and water users in the State entered into or established subsequent to September 30, 1968, for use on Federal, State, or privately owned lands in the State (for a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2), after first providing for the delivery of water under 43 U.S.C. §1524(e), pursuant to the Repayment Contract for the delivery of Colorado River water for the CAP including use of Colorado River water on Indian lands.

4. DELIVERY OF WATER:

4.1 Obligations of the United States. Subject to the terms, conditions, and provisions set forth herein and in the Repayment Contract, during such periods as it operates and maintains the Project Works, the United States shall deliver Project Water for M&I use by the Subcontractor. The United States shall use all reasonable diligence to make available to the Subcontractor the quantity of Project Water specified in the schedule submitted by the Subcontractor in accordance with Article 4.4. After transfer of OM&R to the Operating Agency, the United States shall make deliveries of Project Water to the Operating Agency which shall make subsequent delivery to the Subcontractor as provided herein.

4.2 Term of Subcontract. This subcontract shall become effective upon the later of: (i) the date on which it is confirmed as provided for in Article 6.12; (ii) the date on which the Secretary of the Interior publishes in the Federal Register the statement of findings described in section 207(c)(1) of the Arizona Water Settlements Act, 118 Stat. 3478; and (iii) the date on which the Subcontractor has paid or provided for payment of past M&I water service capital charges as required by the Contractor. This subcontract shall be for permanent service as that term is used in Section 5 of the Boulder Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered under the terms of this subcontract for a period of 100 years beginning January 1 of the Year following that in which the subcontract becomes effective; provided, that this subcontract may be renewed upon written request by the Subcontractor upon terms and conditions of renewal to be agreed upon not later than 1 year prior to the expiration of this subcontract; and provided, further, that such terms and conditions shall be consistent with Article 9.9 of the Repayment Contract.

* * * *

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4.3 <u>Conditions Relating to Delivery and Use</u>. Delivery and use of water under this subcontract is conditioned on the following, and the Subcontractor hereby agrees that:

(a) All uses of Project 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.

(b) The system or systems through which water for Agricultural, M&I (including underground storage), and Miscellaneous purposes is conveyed after delivery to the Subcontractor 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.

(c) The Subcontractor shall not pump, or within its legal authority, permit others to pump ground water from within the exterior boundaries of the Subcontractor'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, the Contractor, and the Subcontractor shall agree, or shall have previously agreed, that a surplus of ground water exists and drainage is or was required; <u>provided</u>, <u>however</u>, that such pumping may be approved by the Contracting Officer and the Contractor, and approval shall not be unreasonably withheld, if such pumping is in accord with the Basin Project Act and upon submittal by the Subcontractor 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.

(d) The Subcontractor shall not sell, lease, exchange, forbear or otherwise transfer Project Water; provided, however, that this does not prohibit exchanges of Project Water within the State of Arizona covered by separate agreements; and provided, further, that this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that this does not prohibit the resale or exchange of Project Water within the State of Arizona pursuant to Subarticle 4.3(e).

(e)(i) Project Water scheduled for delivery in any Year under this subcontract may be used by the Subcontractor or resold, or exchanged by the Subcontractor pursuant to appropriate agreements approved by the Contracting Officer and the Contractor. If said water is resold or exchanged by the Subcontractor for an amount in excess of that which the Subcontractor is obligated to pay under this subcontract, the excess amount shall be paid forthwith by the Subcontractor to the Contractor for application against the Contractor's Repayment Obligation to the United States; provided, however, that the Subcontractor shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs.

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

(iii) In the event the Subcontractor or the Contracting Officer and the Contractor are unable to sell any portion of the Subcontractor's Project

Water scheduled for delivery and not required by the Subcontractor, the Subcontractor shall be relieved of the pumping energy portion of the OM&R charges associated with the undelivered water as determined by the Contractor.

(f) Notwithstanding any other provision of this subcontract, Project Water shall not be delivered to the Subcontractor unless and until the Subcontractor has obtained final environmental clearance from the United States for the system or systems through which Project Water is to be conveyed after delivery to the Subcontractor at the Subcontractor's Project turnout(s). Such system(s) shall include all pipelines, canals, distribution systems, treatment, storage, and other facilities through or in which Project Water is conveyed, stored, or treated after delivery to the Subcontractor at the Subcontractor's Project turnout(s). In each instance, final environmental clearance will be based upon a review by the United States of the Subcontractor's plans for taking and using Project Water and will be given or withheld by the United States in accordance with the <u>Final Environmental Impact Statement -- Water Allocations and Water Service Contracting</u> (FES 82-7, filed March 19, 1982) and the National Environmental Policy Act of 1969 (83 Stat. 852). Any additional action(s) required on behalf of the Subcontractor in order to obtain final environmental clearance from the United States will be identified to the Subcontractor by the United States, and no Project Water shall be delivered to the Subcontractor unless and until the Subcontractor has completed all such action(s) to the satisfaction of the United States.

4.4 <u>Procedure for Ordering Water</u>.

(a) At least 15 months prior to the date the Secretary expects to issue the Notice of Completion of the Water Supply System, or as soon thereafter as is practicable, the Contracting Officer shall announce by written notice to the Contractor the amount of Project Water available for delivery during the Year in which said Notice of Completion is issued (initial Year of water delivery) and during the following Year. Within

30 days of receiving such notice, the Contractor shall issue a notice of availability of Project Water to the Subcontractor. The Subcontractor shall, within a reasonable period of time as determined by the Contractor, submit a written schedule to the Contractor and the Contracting Officer showing the quantity of water desired by the Subcontractor during each month of said initial Year and the following Year. The Contractor shall notify the Subcontractor by written notice of the Contractor's action on the requested schedule within 2 months of the date of receipt of such request.

(b) The amounts, times, and rates of delivery of Project Water to the Subcontractor during each Year subsequent to the Year following said initial Year of water delivery shall be in accordance with a water delivery schedule for that Year. Such schedule shall be determined in the following manner:

(i) On or before June 1 of each Year beginning with the Year following the initial Year of water delivery pursuant to this subcontract, the Contracting Officer shall announce the amount of Project Water available for delivery during the following Year in a written notice to the Contractor. In arriving at this determination, the Contracting Officer, subject to the provisions of the Repayment Contract, shall use his best efforts to maximize the availability and delivery of Arizona's full entitlement of Colorado River water over the term of this subcontract. Within 30 days of receiving said notice, the Contractor shall issue a notice of availability of Project Water to the Subcontractor.

(ii) On or before October 1 of each Year beginning with the Year following said initial Year of water delivery, the Subcontractor shall submit in writing to the Contractor and the Contracting Officer a water delivery schedule indicating the amounts of Project Water desired by the Subcontractor during each month of the following Year along with a preliminary estimate of Project Water desired for the succeeding 2 years.

(iii) Upon receipt of the schedule, the Contractor and the Contracting Officer shall review it and, after consultation with the Subcontractor, shall make only such modifications to the schedule as are necessary to ensure that the amounts, times, and rates of delivery to the Subcontractor are consistent with the delivery capability of the Project, considering, among other things, the availability of water and the delivery schedules of all subcontractors; provided, that this provision shall not be construed to reduce annual deliveries to the Subcontractor.

(iv) On or before November 15 of each Year beginning with the Year following said initial Year of water delivery, the Contractor shall determine and furnish to the Subcontractor and the Contracting Officer the water delivery schedule for the following Year which shall show the amount of water to be delivered to the Subcontractor during each month of that Year, contingent upon the Subcontractor remaining eligible to receive water under all terms contained herein.

(c) The monthly water delivery schedules may be amended upon the Subcontractor's written request to the Contractor. Proposed amendments shall be submitted by the Subcontractor to the Contractor no later than 15 days before the desired change is to become effective, and shall be subject to review and modification in like manner as the schedule. The Contractor shall notify the Subcontractor and the Contracting Officer of its action on the Subcontractor's requested schedule modification within 10 days of the Contractor's receipt of such request.

(d) The Contractor and the Subcontractor shall hold the United States, its officers, agents, and employees, harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with the actions of the Contractor regarding water delivery schedules furnished to the Subcontractor.

(e) In no event shall the Contracting Officer or the Contractor be required to deliver to the Subcontractor from the Water Supply System in any one month a total amount of Project Water greater than eleven percent (11%) of the Subcontractor's maximum entitlement; provided, however, that the Contracting Officer may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to other subcontractors as determined by the Contracting Officer and the Contractor and if the Subcontractor agrees to accept such increased deliveries.

4.5 Points of Delivery--Measurement and Responsibility for Distribution of Water.

(a) The water to be furnished to the Subcontractor pursuant to this subcontract 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 the Contractor, after consultation with the Subcontractor.

(b) Unless the United States and the Subcontractor agree by contract to the contrary, the Subcontractor shall construct and install, at its sole cost and expense, connection facilities required to take and convey the water from the turnouts to the Subcontractor's service area. The Subcontractor shall furnish, for approval of the Contracting Officer, drawings showing the construction to be performed by the Subcontractor within the Water Supply System right-of-way 6 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 from the Water Supply System shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the Operating Agency. Upon the request of the Subcontractor or the Contractor, the accuracy of such measurements shall be investigated by the Contracting Officer or the Operating Agency, Contractor, and Subcontractor, 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, the Contractor, nor the Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project Water beyond the delivery point(s) agreed to pursuant to Subarticle 4.5(a). The Subcontractor shall hold the United States, the Contractor, 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 Subcontractor's control, carriage, handling, use, disposal, or distribution of such water beyond said delivery point(s).

4.6 Temporary Reductions. 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, the United States or the Operating Agency may, after consultation with the Contractor, temporarily discontinue or reduce the quantity of water to be furnished to the Subcontractor as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the furnishing of water to the Subcontractor, but so far as feasible the United States or the Operating Agency shall coordinate any such discontinuance or reduction with the Subcontractor and shall give the Subcontractor 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 Subcontractor of less water than what has been paid for in advance, the Subcontractor shall be entitled to be reimbursed for the appropriate proportion of such advance payments prior to the date of the Subcontractor's next payment of water service charges or the Subcontractor may be given credit toward the next payment of water charges if the Subcontractor should so desire.

4.7 Priority in Case of Shortage. On or before June 1 of each Year, the Secretary shall announce the Available CAP Supply for the following Year in a written notice to the Contractor.

(a) Prior to January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements set forth in subparagraphs (i) through (iii) below:

(i) Three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water;

(ii) Six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water; and

(iii) Up to one hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

(b) On or after January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements as set forth in subparagraphs (i) through (iv) below:

(i) Three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water;

(ii) Six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water;

(iii) Up to forty-seven thousand three hundred three (47,303) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water pursuant to the Hohokam Agreement; and

(iv) Up to one hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

(c) Initial distribution of water in time of shortage.

(i) If the Available CAP Supply is equal to or less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then 36.37518% of the Available CAP Supply shall be available for delivery as CAP Indian Priority Water and the remainder shall be available for delivery as CAP M&I Priority Water.

(ii) If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water shall be determined in accordance with the following equation and the remainder shall be available for delivery as CAP M&I Priority Water:

$$I = \{[32{,}770 \div (E - 853{,}079)] \times W\} + (343{,}079 - \{[32{,}770 \div (E - 853{,}079)] \times E\})$$

where

I = the quantity of water available for delivery as CAP Indian Priority Water

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraphs 4.7(a) or (b), whichever is applicable; and

W = the Available CAP Supply

Example A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraph 4.7(a) is nine hundred eighty-one thousand nine hundred two (343,079 + 638,823 + 0) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) acre-feet plus 25.43800% of the Available CAP Supply.

Example B. If, after January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraph 4.7(b) is one million twenty-nine thousand three hundred twenty-three (1,029,323) acre-feet (343,079 + 638,823 + 47,303 + 118), then the quantity of water available for delivery as CAP Indian Priority Water would be one hundred fifty-one thousand six hundred ninety-one (151,691) acre-feet plus 18.59354% of the Available CAP Supply.

(d) In time of shortage unscheduled CAP Water shall be redistributed as follows:

(i) Any water available for delivery as CAP Indian Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP Indian Priority Water shall become available for delivery as CAP M&I Priority Water.

(ii) CAP M&I Priority Water shall be distributed among those entities with contracts for the delivery of CAP M&I Priority Water in a manner determined by the Secretary and the CAP Operating Agency in consultation with M&I water users to fulfill all delivery requests to the greatest extent possible. Any water available for delivery as CAP M&I Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of

CAP M&I Priority Water shall become available for delivery as CAP Indian Priority Water.

(e) Any water remaining after all requests for delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied shall become available for delivery as CAP NIA Priority Water.

(f) Nothing in this paragraph 4.7 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such contracts, CAP water in amounts greater than such contractor's entitlement.

4.8 Secretarial Control of Return Flow.

(a) The Secretary reserves the right to capture all Return Flow flowing from the exterior boundaries of the Contractor'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 Project use Return Flow which originates or results from water contracted for from the Central Arizona Project within the boundaries of the Contractor's Service Area if, in his judgment, such Return Flow is not being put to a beneficial use. The Subcontractor 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. The Subcontractor 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 the Contractor:

* * * *

* * * *

(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 Subcontractor for Project 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 Subcontractor, as described above, the excess amount shall be forthwith returned by the Subcontractor to the Contractor for application against the Contractor'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 that may be retained by the Subcontractor shall be subject to the advance approval of the Contractor and the Contracting Officer.

(c) Any Return Flow captured by the United States and determined by the Contracting Officer and the Contractor to be suitable and available for use by the Subcontractor may be delivered by the United States or Operating Agency to the Subcontractor as a part of the water supply for which the Subcontractor subcontracts hereunder and such water shall be accounted and paid for pursuant to the provisions hereof.

(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.

4.9 Water and Air Pollution Control. The Subcontractor, in carrying out this subcontract, 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.

4.10 Quality of Water. 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, the Contractor, 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 Subcontractor waives its right to make a claim against the United States, the Operating Agency, the Contractor, or another subcontractor because of changes in water quality caused by the commingling of Project Water with other water.

4.11 Exchange Water.

(a) Where the Contracting Officer determines the Subcontractor is physically able to receive Colorado River mainstream water in exchange for or in replacement of existing supplies of water from surface sources other than the Colorado River, the Contracting Officer may require that the Subcontractor 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; provided, however, that a sub-contractor on the Project aqueduct shall not be required to enter into exchanges in which existing supplies of water from surface sources are diverted for use by other subcontractors downstream on the Project aqueduct.

(b) If, in the event of shortages, the Subcontractor has yielded water from other surface water sources in exchange for Colorado River mainstream water supplied by the Contractor or the Operating Agency, the Subcontractor shall have first priority against other users supplied with Project Water that have not yielded water from other surface water sources but only in quantities adequate to replace the water so yielded.

4.12 Entitlement to Project M&I Water.

(a) The Subcontractor is entitled to take a maximum of 8,654 acre-feet of Project Water for M&I uses including but not limited to underground storage.

(b) If at any time during the term of this subcontract there is available for allocation additional M&I Project Water, or Agricultural Water converted to M&I use, it shall be delivered to the Subcontractor at the same water service charge per acre-foot and with the same priority as other M&I Water, upon execution or amendment of an appropriate subcontract among the United States, the Contractor, and the Subcontractor and payment of an amount equal to the acre-foot charges previously paid by other subcontractors pursuant to Article 5.2 hereof plus interest. In the case of Agricultural Water conversions, the payment shall be reduced by all previous payments of agricultural capital charges for each acre-foot of water converted. The interest due shall be calculated for the period between issuance of the Notice of Completion of the Water Supply System and execution or amendment of the subcontract using the weighted interest rate received by the Contractor on all investments during that period.

4.13 Delivery of Project Water Prior to Completion of Project Works. Prior to the date of issuance of the Notice of Completion of the Water Supply System by the Secretary, water may be made available for delivery by the Secretary on a "when available" basis at a water rate and other terms to be determined by the Secretary after consultation with the Contractor.

5. PAYMENTS:

5.1 Water Service Charges for Payment of Operation, Maintenance, and Replacement Costs. Subject to the provisions of Article 5.4 hereof, the Subcontractor shall pay in advance for Project OM&R costs estimated to be incurred by the United States or the Operating Agency. At least 15 months prior to first delivery of Project Water, or as soon thereafter as is practicable, the Contractor shall furnish the Subcontractor with an estimate of the Subcontractor'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 Contractor, but prior to the delivery of water, the Subcontractor shall advance to the Contractor 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 Contractor in equal monthly installments the Subcontractor's share of such estimated costs. Advances of monthly payments for each subsequent Year shall be made by the Subcontractor to the Contractor on the basis of annual estimates to be furnished by the Contractor 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 determined by the Contractor and shall be adjusted in the next succeeding annual estimates; provided, however, that if in the opinion of the Contractor the amount of any annual OM&R estimate is likely to be insufficient to cover the above-mentioned costs during such period, the Contractor may increase the annual estimate of the Subcontractor's OM&R costs by written notice thereof to the Subcontractor, and the Subcontractor shall forthwith increase its remaining monthly payments in such Year to the Contractor by the amount necessary to cover the insufficiency. All estimates of OM&R costs shall be accompanied by data and computations relied on by the Contractor in determining the amounts of the estimated OM&R costs and shall be subject to joint review by the Subcontractor and the Contractor.

5.2 M&I Water Service Charges.

(a) Subject to the provisions of Article 5.4 hereof and in addition to the OM&R payments required in Article 5.l hereof, the Subcontractor shall, in advance of the delivery of Project M&I Water by the United States or the Operating Agency, make payment to the Contractor in equal semiannual installments of an M&I Water service capital charge based on a maximum entitlement of 8,654 acre-feet per year multiplied by the rate established by the Contractor for that year.

(b) The M&I Water service capital charge may be adjusted periodically by the Contractor as a result of repayment determinations provided for in the Repayment Contract and to reflect all sources of revenue, but said charge per acre-foot shall not be greater than the amount required to amortize Project capital costs allocated to the M&I function and determined by the Contracting Officer to be a part of the Contractor's Repayment Obligation. Such amortization shall include interest at 3.342 percent per annum. If any adjustment is made in the M&I Water service capital charge, notice thereof shall be given by the Contractor to the United States and to the Subcontractor on or before June 1 of the Year preceding the Year the adjusted charge becomes effective. The M&I Water service capital charge payment for the initial Year shall be advanced to the Contractor in equal semiannual installments on or before December 1 preceding the initial Year and June 1 of said initial Year; provided, however, that the payment of the initial M&I Water service capital charge shall not be due until the Year in which Project Water is available to the Subcontractor after Notice of Completion of the Water Supply System is issued. Thereafter, for each subsequent Year, payments by the Subcontractor in accordance with the foregoing provisions shall be made in equal semiannual installments on or before the December 1 preceding said subsequent Year and the June 1 of said subsequent Year as may be specified by the Contractor in written notices to the Subcontractor.

(c) Payment of all M&I Water service capital and corresponding OM&R charges becoming due hereunder prior to or on the dates stipulated in Articles 5.1 and 5.2 is a condition precedent to receiving M&I Water under this subcontract.

(d) All payments to be made to the Contractor or the United States under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments fall due from revenues legally available to the Subcontractor 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

Subcontractor, nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of this subcontract, nor shall such sources be liable for the payments, contributions, and other costs pursuant to this subcontract, or to satisfy any obligation hereunder unless duly and lawfully allocated and budgeted for such purpose by the Subcontractor for the applicable budget year; and Provided, further, That no portion of this agreement shall ever be construed to create an obligation superior in lien to or on a parity with the Subcontractor's revenue bonds now or hereafter issued. The Subcontractor 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 Subcontractor may meet its obligations hereunder and make in full all payments required under this subcontract on or before the date such payments become due.

5.3 Loss of Entitlement. The Subcontractor shall have no right to delivery of water from Project facilities during any period in which the Subcontractor may be in arrears in the payment of any charges due the Contractor. The Contractor may sell to another entity any water determined to be available under the Subcontractor's entitlement for which payment is in arrears; provided, however, that the Subcontractor may regain the right to use any unsold portion of the water determined to be available under the original entitlement upon payment of all delinquent charges plus any difference between the subcontractual obligation and the price received in the sale of the water by the Contractor and payment of charges for the current period.

5.4 Refusal to Accept Delivery. In the event the Subcontractor fails or refuses in any Year to accept delivery of the quantity of water available for delivery to and required to be accepted by it pursuant to this subcontract, or in the event the Subcontractor in any Year fails to submit a schedule for delivery as provided in Article 4.4 hereof, said failure or refusal shall not relieve the Subcontractor of its obligation to make the payments required in this subcontract.

5.5 Charge for Late Payments. The Subcontractor shall pay a late payment charge on installments or charges that are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; provided, that the late payment charge percentage rate shall not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment.

6. GENERAL PROVISIONS:

6.1 Repayment Contract Controlling. 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 Project Water to the various subcontractors within the Project Service Area; and the Contractor has obligated itself for the payment of various costs, expenses, and other amounts allocated to the Contractor pursuant to Article 9 of the Repayment Contract. The Subcontractor expressly approves and agrees to all the terms presently set out in the Repayment Contract including Subarticle 8.8(b)(viii) thereof, 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.

6.2 Effluent Exchanges. The Subcontractor may enter into direct effluent exchanges with Indian entities that have received an allocation of Project Water and receive all benefits from the exchange.

6.3 Notices. Any notice, demand or request authorized or required by this subcontract shall be deemed to have been given when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020, Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the City of Chandler, P.O. Box 4008, Chandler, Arizona 85244-4008, on behalf of the United States or Contractor. 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.

6.4 Water Conservation Program.

(a) While the contents and standards of a given water conservation program are primarily matters of State and local determination, there is a strong Federal interest in developing an effective water conservation program because of this subcontract. The Subcontractor shall develop and implement an effective water conservation program for all uses of water that is provided from or conveyed through Federally constructed or Federally financed facilities. That water conservation program shall contain definite goals, appropriate water conservation measures, and time schedules for meeting the water conservation objectives.

(b) A water conservation program, acceptable to the Contractor and the Contracting Officer, shall be in existence prior to one or all of the following: (1) service of Federally stored/conveyed water; (2) transfer of operation and maintenance of the Project facilities to the Contractor or Operating Agency; or (3) transfer of the Project to an operation and maintenance status. The distribution and use of Federally stored/conveyed water and/or the operation of Project facilities transferred to the Contractor shall be consistent with the adopted water conservation program. Following execution of this subcontract, and at subsequent 5-year intervals, the Subcontractor shall resubmit the water conservation plan to the Contractor and the Contracting Officer for review and approval. After review of the results of the previous 5 years and after consultation with the Contractor, the Subcontractor, and the Arizona Department of Water Resources or its successor, the Contracting Officer may require modifications in the water conservation program to better achieve program goals.

6.5 <u>Rules, Regulations, and Determinations</u>.

(a) The Contracting Officer shall have the right to make, after an opportunity has been offered to the Contractor and Subcontractor for consultation, rules and regulations consistent with the provisions of this subcontract, the laws of the United States and the State of Arizona, to add to or to modify them as may be deemed proper and necessary to carry out this subcontract, and to supply necessary details of its administration which are not covered by express provisions of this subcontract. The Contractor and Subcontractor shall observe such rules and regulations.

(b) Where the terms of this subcontract provide for action to be based upon the opinion or determination of any party to this subcontract, 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 or Subcontractor 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 or Subcontractor and shall be conclusive upon the parties.

6.6 Officials Not to Benefit.

(a) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this subcontract or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this subcontract if made with a corporation or company for its general benefit.

(b) No official of the Subcontractor shall receive any benefit that may arise by reason of this subcontract other than as a water user within the Project and in the same manner as other water users within the Project.

6.7 Assignment Limited--Successors and Assigns Obligated. The provisions of this subcontract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this subcontract or any part or interest therein shall be valid until approved by the Contracting Officer.

6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be construed (a) as depriving any 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 any party of any defense thereto which would otherwise be available.

6.9 Books, Records, and Reports. The Subcontractor shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of Project works, and to other matters as the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as he may require. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of each other's books and records relating to matters covered by this subcontract.

6.10 Equal Opportunity. During the performance of this subcontract, the Subcontractor agrees as follows:

(a) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subcontractor shall 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 Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

(c) The Subcontractor shall 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 Subcontractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Subcontractor shall 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 Subcontractor 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 shall 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 Subcontractor's noncompliance with the nondiscrimination clauses of this subcontract or with any of such rules, regulations, or orders, this subcontract may be canceled, terminated, or suspended, in whole or in part, and the Subcontractor 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 Subcontractor shall include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions shall be binding upon each subcontractor or vendor. The Subcontractor shall 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; <u>provided</u>, <u>however</u>, that in the event a Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Subcontractor may request the United States to enter into such litigation to protect the interest of the United States.

6.11 <u>Title VI, Civil Rights Act of 1964</u>.

(a) The Subcontractor agrees that it shall comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Subcontractor receives financial assistance from the United States and hereby gives assurance that it shall immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Subcontractor by the United States, this assurance obligates the Subcontractor, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the Subcontractor for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Subcontractor for the period during which the Federal financial assistance is extended to it by the United States.

(c) This assurance is given 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 Subcontractor by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Subcontractor recognizes and agrees that such Federal financial assistance shall be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Subcontractor, its successors, transferees, and assignees.

6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek a final decree of the proper court of the State of Arizona approving and confirming the subcontract and decreeing and adjudging it to be lawful, valid, and binding on the Subcontractor. The Subcontractor shall furnish to the United States a certified copy of such decree and of all pertinent supporting records. This subcontract shall not be binding on the United States, the Contractor, or the Subcontractor until such final decree has been entered.

6.13 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve the Subcontractor from any obligation under this subcontract. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

IN WITNESS WHEREOF, the parties hereto have executed this subcontract No. 07-XX-30-W0482 the day and year first above-written.

Legal Review and Approval

By: Katherine Ott Verburg
Field Solicitor
Phoenix, Arizona

THE UNITED STATES OF AMERICA

By: Larry Walkoviak
Acting Regional Director
Lower Colorado Region
Bureau of Reclamation

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest:______________________
Secretary

By:______________________
President

CITY OF CHANDLER

Attest: Marla Paddock
Title: City Clerk

By:______________________
Title: MAYOR

CITY OF CHANDLER
CORPORATE
SEAL
ARIZONA

APPROVED AS TO FORM:

____
CHANDLER CITY ATTORNEY

EXHIBIT A

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

INDEX

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UNITED STATES
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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 <u>Federal Register</u> notice dated March 24, 1983, and any subsequent reallocation by the Secretary as contemplated in paragraph 6 of said <u>Federal Register</u> 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 <u>Changes in Project Works</u>. 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 <u>Subcontracts</u>.

(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; <u>Provided</u>, <u>however</u>, 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 <u>Priority in Case of Shortage</u>.

(a) Subject to the provisions of Section 304(e) of the Basin Project Act and the Secretary's allocation decisions published in the <u>Federal Register</u> 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; <u>Provided</u>, <u>however</u>, 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 <u>No Guarantee of Availability of Water</u>. 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 <u>Rights Reserved to the United States to Have Water Carried by Project Facilities</u>. 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; <u>Provided</u>, <u>however</u>, 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 <u>Wheeling Non-Project Water.</u> 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 <u>Payment of Contractor's Construction Cost Repayment Obligation</u>.

(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; <u>Provided</u>, 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 61470, Boulder City, Nevada 89006, 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

DUPLICATE ORIGINAL

Agreement No. 17-XX-30-W0622

CENTRAL ARIZONA PROJECT SYSTEM USE AGREEMENT
BETWEEN
THE UNITED STATES
AND
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT

1. **PREAMBLE:** THIS CENTRAL ARIZONA PROJECT ("CAP") SYSTEM USE AGREEMENT, hereinafter referred to as ("Agreement"), is made and entered into this 2nd day of February, 2017, between the UNITED STATES OF AMERICA, acting through the Secretary of the Interior, hereinafter referred to as ("Secretary"), and the Central Arizona Water Conservation District, hereinafter referred to as ("CAWCD"), a multi-county water conservation district organized under the laws of the State of Arizona, each being referred to individually as "Party" and collectively as the "Parties".

WITNESSETH, THAT:

2. **EXPLANATORY RECITALS:**

2.1 WHEREAS, Section 301(a) of the Colorado River Basin Project Act ("Basin Project Act"), Pub. L. 90-537, authorized construction of the CAP;

2.2 WHEREAS, Section 102(a) of the Basin Project Act identified authorized purposes as "the purposes, among others, of regulating the flow of the Colorado River; controlling floods; improving navigation; providing for the storage and delivery of the waters of the Colorado River for reclamation of lands, including supplemental water supplies, and for municipal, industrial, and other beneficial purposes; improving water quality; providing for basic public outdoor recreation facilities; improving conditions for fish and wildlife, and for the generation and sale of electrical power as an incident of the foregoing purposes";

2.3 WHEREAS, the United States has allocated CAP water to various Arizona Indian Tribes as part of Indian water rights settlements or in anticipation of Indian water rights settlements, and has entered into Long-Term Contracts with several Arizona Indian Tribes for the delivery of CAP water;

2.4 WHEREAS, the United States has an interest in ensuring Arizona Indian Tribes with Long-Term Contracts receive their allocation of CAP water pursuant to the terms of their Long-Term

Contracts, and in times of a Water Shortage, that all Arizona Indian Tribes with Long-Term Contracts have the opportunity to firm the delivery of their CAP allocation using the CAP System;

2.5 WHEREAS, Section 103 of the Arizona Water Settlements Act ("AWSA"), Pub. L. 108-451, provides that, "In accordance with the CAP Master Repayment Contract, the CAP may be used to transport nonproject water for - (1) domestic, municipal, fish and wildlife, and industrial purposes; and (2) any purpose authorized under the Colorado River Basin Project Act;"

2.6 WHEREAS, Section 105 of the AWSA sets forth certain obligations of the Secretary and the State of Arizona to firm water supplies for Arizona Indian water right claims and settlements;

2.7 WHEREAS, as required by Section 105 of the Arizona Water Settlements Act ("AWSA") and in accordance with the Arizona Revised Statutes ("A.R.S.") § 45-2423 and § 45-2491, the Secretary and the State of Arizona, acting through the Arizona Water Banking Authority ("Banking Authority"), entered into the Agreement Between the Secretary of the Interior and the State of Arizona for the Firming of Central Arizona Project Indian Water, dated November 15, 2007;

2.8 WHEREAS, in accordance with Title 45, Chapter 14, Articles 1 through 5 of A.R.S., the Banking Authority stores water in underground storage facilities and groundwater savings facilities to accrue Long-Term Storage Credits for the following purposes: (a) to carry out Arizona's obligations under Section 105 of the AWSA, (b) to firm CAP municipal and industrial ("M&I") supplies for Long-Term Contractors, (c) to firm water supplies for certain M&I users of Colorado River water in the State of Arizona located outside the service area of CAWCD, (d) to meet interstate firming obligations under contracts entered into with the State of Nevada or others pursuant to 43 C.F.R. Part 414, and (e) to meet State of Arizona commitments to firm Indian Settlement water;

2.9 WHEREAS, to date, the Banking Authority has accrued and acquired over 4 million Long-Term Storage Credits under Title 45, Chapter 3.1 of the A.R.S, which may be recovered in accordance with Arizona state law under permits issued by the Arizona Department of Water Resources ("ADWR");

2.10 WHEREAS, CAWCD is a multi-county water conservation district organized under A.R.S. § 48-3701 et seq.;

2.11 WHEREAS, CAWCD is the operating agency for the United States for the CAP and operates the CAP System in accordance with contracts between CAWCD and the United States, including, among others, the Master Repayment Contract and the Operating Agreement;

2.12 WHEREAS, under A.R.S. §§ 45-2457, 45-2472 and 45-2491, CAWCD is a recovery agent for the Banking Authority for the purpose of recovering Long-Term Storage Credits to: assist in carrying out the State of Arizona's obligations under Section 105 of the AWSA; firm CAP M&I supplies for Long-Term Contractors; firm certain M&I uses of Colorado River water in Arizona located outside the service area of CAWCD; and meet interstate firming obligations;

2.13 WHEREAS, a Long-Term Contractor may utilize Non-Project Water supplies, including recovered Long-Term Storage Credits, for the purpose of firming its Long-Term Contract entitlement in the event of a Water Shortage;

2.14 WHEREAS, Reclamation and CAWCD anticipate that the Operational Capability of the CAP System will continue to be adequate to deliver Project Water, and during Water Shortage, Project Water and Firming Water, to delivery points within the Segments where Long-Term Contractors can take delivery to their service area or reservation;

2.15 WHEREAS, Long-Term Contractors may desire to schedule delivery of Project Water, and during Water Shortage, Project Water and Firming Water, either directly or through exchange, to Segments that are Upstream or Downstream of the Long-Term Contractor's service area or reservation;

2.16 WHEREAS, the Operational Capability of the CAP System may not be sufficient during certain months and certain Segments for the delivery of Project Water, and during Water Shortage, Project Water and Firming Water, to Segments that are Downstream of the service area or reservation of Long-Term Contractors;

2.17 WHEREAS, entities may acquire Non-Project Water and desire to ensure there is sufficient Operational Capability for the delivery of that Non-Project Water;

2.18 WHEREAS, the Operational Capability of the CAP System may be optimized through modifications of the existing CAP System for the purpose of creating additional Operational Capability

Provided, that such additional Operational Capability will not exceed the annual system capacity authorized in the Basin Project Act;

2.19 WHEREAS, the Parties intend that the existence of additional Operational Capability shall be verified by Reclamation after modifications to the CAP System are completed for this purpose;

2.20 WHEREAS, Reclamation and CAWCD anticipate that from time to time entities will request the use of the CAP System to deliver Non-Project Water, whether for firming or other purposes;

2.21 WHEREAS, it is Reclamation policy to maximize the benefits of a Federal Reclamation project such as the CAP;

2.22 WHEREAS, Articles 8.17 and 8.18 of the Master Repayment Contract support the full use of the CAP System pursuant to contracts or other arrangements for such use;

2.23 WHEREAS, Reclamation and CAWCD desire to clarify the administration of Articles 8.17 and 8.18 of the Master Repayment Contract with respect to the use of the CAP System;

2.24 WHEREAS, the Repayment Stipulation grants CAWCD exclusive authority to sell or use all Excess Water for any authorized purpose of the CAP, subject to the terms and conditions set forth in the Repayment Stipulation; and

2.25 WHEREAS, Reclamation and CAWCD desire to enter into this Agreement: (a) to adopt a standard form of CAWCD Wheeling Contract for the transportation of Non-Project Water through the CAP System, (b) to set forth scheduling priorities in the event that Operational Capability of the CAP System is constrained, (c) to facilitate the use of the CAP System to firm Long-Term Contracts during a Water Shortage, including Firming for Indian Long-Term Contractors, (d) to facilitate the use of the CAP System to firm certain M&I use of Colorado River water in the State of Arizona located outside the service area of CAWCD, (e) to facilitate the use of the CAP System to meet interstate obligations under contracts entered into with the State of Nevada or others pursuant to 43 C.F.R. Part 414, and (f) to set forth standard terms and conditions for a Reclamation Wheeling Contract.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the United States and CAWCD agree as follows:

3. **DEFINITIONS**:

3.1 "Agricultural Settlement Pool Contracts" means Excess Water Contracts entered into pursuant to the Supplemental Policy for Marketing of Excess Water for Non-Indian Agricultural Use – 2004 through 2030, as supplemented.

3.2 "Annual Operating Plan" means the final Water Delivery Schedules prepared annually by CAWCD, confirming the volumes of Project Water and Non-Project Water to be delivered during the following Year.

3.3 "Arizona Water Settlements Act or AWSA" means the Arizona Water Settlements Act, Pub. L. 108-451, 118 Stat. 3478, dated December 10, 2004, as amended.

3.4 "A.R.S." means the Arizona Revised Statutes.

3.5 "Banking Authority" means the Arizona Water Banking Authority or its successor agency.

3.6 "Basin Project Act" means the Colorado River Basin Project Act, Pub. L. 90-537, 82 Stat. 885, dated September 30, 1968, as amended.

3.7 "CAP" means the Central Arizona Project.

3.8 "CAP System" means all of the Transferred Works of the CAP including but not limited to: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) the New Waddell Dam; (F) any pumping plant or appurtenant works of a feature described in any of (A) through (E); and (G) any extension of, addition to, or replacement for a feature described in any of (A) through (F).

3.9 "CAP Terminus" means the terminus of the CAP System as depicted on the map attached hereto as Exhibit A.

3.10 "CAWCD" means the Central Arizona Water Conservation District, a multi-county water conservation district organized under the laws of Arizona, or any successor operating agency for the CAP.

3.11 "CAWCD Wheeling Contract" means an executed contract substantially in the form of the standard form of CAWCD Wheeling Contract attached hereto as Exhibit B or such other CAWCD wheeling contract as may be approved by Reclamation pursuant to Article 8.18 of the Master Repayment Contract.

3.12 "Central Arizona Groundwater Replenishment District" means the replenishment authorities granted to CAWCD in Title 48, Chapter 22, Article 4 of A.R.S., which are exercised as a function of CAWCD.

3.13 "Downstream" means the direction along the CAP System towards the CAP Terminus.

3.14 "Excess Water" means that water defined as Excess Water in the Repayment Stipulation.

3.15 "Excess Water Contract" means an agreement between CAWCD and a water user for the delivery of Excess Water.

3.16 "Exchange Agreement" means an agreement between a Long-Term Contractor and a separate party holding Non-Project Water in which Project Water available for delivery to the Long-Term Contractor is exchanged for Non-Project Water.

3.17 "Exchange Implementation Agreement" means an agreement among a non-Federal Long-Term Contractor, a separate party holding Non-Project Water and CAWCD, setting forth the terms and conditions under which CAWCD will deliver Exchange Water pursuant to an Exchange Agreement.

3.18 "Exchange Water" means Project Water exchanged for Non-Project Water pursuant to an Exchange Agreement.

3.19 "Exhibit A" is a map of the CAP System. Exhibit A is attached hereto and by this reference made a part hereof.

3.20 "Exhibit B" sets forth the standard form of CAWCD Wheeling Contract. Exhibit B is attached hereto and by this reference made a part hereof.

3.21 "Exhibit C" sets forth standard terms and conditions for Reclamation Wheeling Contracts to transport Non-Project Water. Exhibit C is attached hereto and by this reference made a part hereof.

3.22 "Federal Arrangement" means an arrangement relating to use of the CAP System entered into by Reclamation and a separate party under Article 8.17 of the Master Repayment Contract.

3.23 "Firming Agreement" means an agreement between the United States or CAWCD and Long-Term Contractors or lessees of tribal Project Water to set forth the terms and conditions under which CAWCD will deliver, and the Long-Term Contractor or lessee of tribal Project Water will accept, Firming Water.

3.24 "Firming" means satisfying all or a portion of a Long-Term Contract entitlement that has been reduced due to a Water Shortage.

3.25 "Firming Water" means water available for Firming a Long-Term Contract, as identified in Section 8 of this Agreement.

3.26 "Fixed OM&R Charge(s)" has the same meaning as under the Repayment Stipulation.

3.27 "Interstate Agreements" means contracts entered into in accordance with 43 C.F.R. Part 414, Offstream Storage of Colorado River Water and Development and Release of Intentionally Created Unused Apportionment in the Lower Division States.

3.28 "Long-Term Contract" means a long-term contract or subcontract for delivery of a Project Water entitlement as defined in footnote 1 to Section 4(a) of the Repayment Stipulation. Excess Water Contracts are not Long-Term Contracts.

3.29 "Long-Term Contractor" means an entity holding a Long-Term Contract.

3.30 "Long-Term Storage Credit" means a Long-Term Storage Credit, as defined in A.R.S. § 45-801.02(11).

3.31 "Master Repayment Contract" means 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, Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, as it may be amended and supplemented.

3.32 "Non-Project Water" means all water, including Recovered Water, other than Project Water. For the purposes of this Agreement the term Non-Project Water does not include Long-Term Storage Credits.

3.33 "Notice of Completion" means the Notice of Completion to be issued by Reclamation at the conclusion of a System Improvement Project.

3.34 "On-River Firming" means agreements entered into with certain M&I users of Colorado River water in Arizona located outside the service area of CAWCD, approved by the Secretary, to provide firming for such water users pursuant to A.R.S. § 45-2457.

3.35 "Operating Agreement" means the Operating Agreement between the United States of America and the Central Arizona Water Conservation District for Operation and Maintenance of the Central Arizona Project, dated June 15, 2000.

3.36 "Operational Capability" means the ability of the CAP System to deliver water given the system's physical and operational characteristics.

3.37 "Project Water" means that water defined as Project Water in the Repayment Stipulation.

3.38 "Projected Additional Operational Capability" means Reclamation's projection of the additional Operational Capability that is expected to result from a proposed System Improvement Project.

3.39 "Project Power" means the United States' entitlement to capacity and energy from 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.

3.40 "Pumping Energy Charge(s)" has the same meaning as under the Repayment Stipulation.

3.41 "Reclamation" means the United States Bureau of Reclamation.

3.42 "Reclamation Wheeling Contract" means a contract between Reclamation and a separate entity to deliver Non-Project Water using the CAP System entered into pursuant to Article 8.17 of the Master Repayment Contract.

3.43 "Recovered Water" means the water resulting from the recovery of Long-Term Storage Credits from wells pursuant to a valid recovery well permit issued by ADWR under A.R.S. § 45-834.01.

3.44 "Repayment Stipulation" means the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al.*, and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

3.45 "Secretary" means the Secretary of the Interior or his duly authorized representative.

3.46 "Segment" means a section of the CAP System between pumping plants, as depicted on the map attached hereto as Exhibit A.

3.47 "System Improvement Project" means a material modification of the Transferred Works that creates Verified Additional Operational Capability in accordance with Section 13 of this Agreement.

3.48 "Transferred Works" means Transferred Works as defined in the Operating Agreement or as may be transferred under subsequent transfer notices.

3.49 "United States" means the United States of America.

3.50 "Upstream" means the direction along the CAP System towards Lake Havasu.

3.51 "Verified Additional Operational Capability" means the additional Operational Capability attributable to a completed System Improvement Project, measured in acre-feet per annum, as determined by Reclamation in accordance with Section 13 of this Agreement.

3.52 "Water Delivery Schedules" means schedules submitted to CAWCD pursuant to the terms of Long-Term Contracts, including leases and exchanges, Excess Water Contracts, CAWCD Wheeling Contracts, Firming Agreements, Reclamation Wheeling Contracts, or Federal Arrangements.

3.53 "Water Shortage" for the purposes of this Agreement, means either that the Project Water supply is insufficient to satisfy all Long-Term Contract orders, or that an unplanned CAP System outage has occurred disrupting the delivery of Long-Term Contract orders.

3.54 "Year" means a calendar year.

4. **<u>TERM OF AGREEMENT</u>**: This Agreement shall commence on the date of execution by Reclamation and CAWCD and shall have the same term as the Master Repayment Contract.

5. **<u>USE OF CAP SYSTEM</u>**:

5.1 CAWCD is authorized to use the CAP System for the following purposes:

5.1.1 Delivery of Project Water;

5.1.2 Delivery of Exchange Water;

5.1.3 On-River Firming;

5.1.4 Satisfaction of Interstate Agreements; and

5.1.5 Delivery of Non-Project Water, including Recovered Water, for Firming of CAP Long-Term Contracts.

5.2 For purposes other than those in Subsections 5.1.1, 5.1.2, 5.1.3, 5.1.4, and 5.1.5 use of the CAP System to deliver water shall require a Reclamation Wheeling Contract, Federal Arrangement, or a CAWCD Wheeling Contract. All uses of the CAP System shall be subject to the Scheduling Priorities for CAP System Use set forth in Section 11 of this Agreement.

6. **STANDARD FORM OF CAWCD WHEELING CONTRACT:** In satisfaction of Article 8.18 of the Master Repayment Contract, the Parties approve the standard form of CAWCD Wheeling Contract attached hereto as Exhibit B. CAWCD may enter into the standard form of CAWCD Wheeling Contract with any Federal, state, local, tribal or private entity desiring to enter such an agreement. Approval of the form of CAWCD Wheeling Contract under this Agreement does not constitute approval of any specific agreement by Reclamation in accordance with Article 8.18 of the Master Repayment Contract. Any specific CAWCD Wheeling Contract must be approved by Reclamation in accordance with Article 8.18 of the Master Repayment Contract and this Agreement.

7. **RECLAMATION WHEELING:**

7.1 As the Operating Agency for the CAP, CAWCD will perform the delivery obligations of the United States to transport Non-Project Water under Reclamation Wheeling Contracts and Federal Arrangements, so long as such obligations are not inconsistent with: (a) existing Long-Term Contracts, (b) the Repayment Stipulation, (c) the Master Repayment Contract, (d) the Operating Agreement, (e) priorities of Project Water; and/or (f) this Agreement. Reclamation will coordinate and consult with CAWCD prior to entering into any Reclamation Wheeling Contracts or Federal Arrangements.

7.2 At a minimum, the terms of any Reclamation Wheeling Contracts will incorporate provisions substantially similar to those in Exhibit C. Reclamation will consult with CAWCD on any variations from the provisions provided in Exhibit C.

7.3 Reclamation will describe the terms of any Federal Arrangements in writing and provide a copy of such writing to CAWCD. At a minimum, the terms of any Federal Arrangements will incorporate provisions substantially similar to those in Exhibit C. Reclamation will consult with CAWCD on any variations from the provisions provided in Exhibit C.

8. **FIRMING WATER:**

8.1 Sources of Firming Water may include, but are not limited to:

8.1.1 Non-Project Water delivered through the CAP System, including Recovered Water introduced into the CAP System; and

8.1.2 Exchange Water.

8.2 Subject to the requirements of the "Amended Navajo Power Marketing Plan" published in the *Federal Register* on September 24, 2007 (72 Fed. Reg. 54286), or any amendments thereto, Project Power, at Project Power rates, may be used to develop or deliver Firming Water.

8.3 CAWCD shall require non-Federal Long-Term Contractors to enter into Firming Agreements for any Firming that involves the use of the CAP System to set forth the terms and conditions under which CAWCD will deliver, and the holder of the Long-Term Contract will accept Firming Water.

8.4 For any Firming of a Federal Long-Term Contract that involves the use of the.CAP System, Reclamation will enter into an agreement with the Federal Long-Term Contractor to specify the terms and conditions under which Firming Water will be delivered to such Federal Long-Term Contractor. At a minimum, the terms of any such agreement will incorporate provisions substantially similar to those in Exhibit C. If the agreement is not in writing, Reclamation will describe the terms of the agreement in writing and provide a copy of such writing to CAWCD.

8.5 As the Operating Agency for the CAP, CAWCD will perform the delivery obligations of the United States to deliver Firming Water, so long as such obligations are not inconsistent with: (a) existing Long-Term Contracts, (b) the Repayment Stipulation, (c) the Master Repayment Contract, (d) the Operating Agreement, (e) priorities of Project Water; and/or (f) this Agreement. Reclamation will coordinate and consult with CAWCD prior to entering into any agreement for the delivery of Firming Water.

8.6 Firming Water shall not be subject to redistribution, nor made available for delivery, under the shortage sharing provisions of Long-Term Contracts.

9. **<u>EXCHANGE AGREEMENTS ENTERED INTO BY LONG-TERM CONTRACTORS</u>:**

9.1 <u>Exchanges between Long-Term Contractors and CAWCD</u>:

9.1.1 Exchanges of Project Water for Non-Project Water, including exchanges of Recovered Water for Firming purposes, between Long-Term Contractors and CAWCD shall be:

9.1.1.1 In accordance with the terms of Long-Term Contracts and this Agreement; and

9.1.1.2 Pursuant to an Exchange Agreement between the Long-Term Contractor and CAWCD, approved by Reclamation.

9.1.2 Notwithstanding Subsection 3.32 of this Agreement, a Long-Term Contract held by CAWCD for the benefit of the Central Arizona Groundwater Replenishment District may be used to exchange Project Water for Long-Term Storage Credits, provided that those credits are transferred into a conservation district account established under A.R.S. § 45-859.01 in satisfaction of a replenishment obligation, and such an exchange shall be:

9.1.2.1 In accordance with the terms of Long-Term Contracts and this Agreement; and

9.1.2.2 Approved by Reclamation.

9.2 <u>Exchanges between Non-Federal Long-Term Contractors and parties holding Non-Project Water supplies:</u>

9.2.1 Other than exchanges with CAWCD under Subsection 9.1 of this Agreement, exchanges of Project Water for Non-Project Water between Non-Federal Long-Term Contractors and separate parties holding Non-Project Water supplies shall be:

9.2.1.1 In accordance with the terms of the Long-Term Contracts involved in such exchanges and this Agreement;

9.2.1.2 Pursuant to an Exchange Agreement between the non-Federal Long-Term Contractor and the party holding the Non-Project Water supply, which is approved by CAWCD and Reclamation; and

9.2.1.3 Pursuant to an Exchange Implementation Agreement among the non-Federal Long-Term Contractor, the party holding the Non-Project Water supply and CAWCD.

9.3 Exchanges between Federal Long-Term Contractors and parties holding Non-Project Water supplies:

9.3.1 Other than exchanges with CAWCD under Subsection 9.1 of this Agreement, exchanges of Project Water for Non-Project Water between Federal Long-Term Contractors and separate parties holding the Non-Project Water supplies shall be:

9.3.1.1 In accordance with the terms of the Federal Long-Term Contracts involved in such exchanges and this Agreement, and

9.3.1.2 Pursuant to an Exchange Agreement between the Federal Long-Term Contractor and the party holding the Non-Project Water supply, which is approved by Reclamation.

9.3.2 Reclamation shall ensure that the recipient of Exchange Water from the CAP System agrees to take delivery of such water in accordance with the terms of the Federal Long-Term Contract under which the exchange of Project Water is being implemented. Reclamation will describe the terms of any such delivery agreement in writing and provide a copy of such writing to CAWCD.

9.3.3 As the Operating Agency for the CAP, CAWCD will perform the delivery obligations of the United States to deliver water pursuant to exchanges of Project Water for Non-Project Water by Federal Long-Term Contractors, so long as such obligations are not inconsistent with (a) existing Long-Term Contracts, (b) the Repayment Stipulation, (c) the Master Repayment Contract, (d) the Operating Agreement, (e) priorities of Project Water; and/or (f) this Agreement. Reclamation will coordinate and consult with CAWCD prior to approving any exchange of Project Water for Non-Project Water by a Federal Long-Term Contractor.

10. **ANNUAL OPERATING PLAN FOR CAP SYSTEM USE:**

10.1 Each year, after receipt of Water Delivery Schedules, CAWCD shall develop an Annual Operating Plan confirming the monthly Water Delivery Schedules for the subsequent Year. The Annual Operating Plan shall, to the extent reasonable, make maximum use of the CAP System, subject to the provisions of Subsection 10.2.1 of this Agreement, and shall be made available for the Secretary's review.

10.2 In the development of the Annual Operating Plan, CAWCD shall:

10.2.1 Take into account the Operational Capability, by month and Segment, following established technical procedures that address such factors as physical and operational constraints, projected Project and Non-Project Water supplies, system losses, projected location and timing of deliveries including constraints caused by deliveries scheduled for delivery Downstream of Long-Term Contractors' reservations or service areas, scheduled maintenance activities, energy programs, Lake Pleasant operations, underground storage facility capacity, daily peak flows, and the reasonable reservation of Operational Capability not to exceed 50,000 acre-feet for operational efficiency.

10.2.2 Apply an annual uniform loss assessment of 5% to the volume of any Non-Project Water delivered by the CAP System, provided, however, Firming Water shall bear no loss assessment.

10.2.3 In accordance with the terms of Long-Term Contracts, including leases and exchanges, Excess Water Contracts, Reclamation Wheeling Contracts, other Federal Arrangements, and CAWCD Wheeling Contracts, make only such adjustments to the Water Delivery Schedules as are necessary to accommodate the physical and operational constraints identified in Subsection 10.2.1 of this Agreement and in accordance with the Scheduling Priorities for CAP System Use set forth in Section 11 of this Agreement.

10.2.4 By December 15 of each year prior, provide a copy of the Annual Operating Plan to Reclamation.

11. **SCHEDULING PRIORITIES FOR CAP SYSTEM USE:**

11.1 If, in preparation of the Annual Operating Plan in Section 10 of this Agreement, CAWCD determines that there is insufficient Operational Capability to satisfy Water Delivery Schedules in specific Segments, in specific months, and if, after affected parties have been consulted and provided opportunities to amend their Water Delivery Schedules, Water Delivery Schedule modifications are required, CAWCD shall utilize the following priorities for scheduling Operational Capability in those Segments and months.

11.1.1 First, Water Delivery Schedules pursuant to Long-Term Contracts for: (a) delivery, directly or by exchange, for use within the Long-Term Contractor's reservation or service area, and/or (b) deliveries for leases, exchanges or underground storage within the same Segment as the Long-Term Contractor's service area or reservation, or within a Segment located Upstream of the Long-Term Contractor's service area or reservation. For Long-Term Contractors that are only able to take delivery of their Project Water entitlement to their service area or reservation by exchange, the approved points of delivery for any such exchange are deemed to be within the same Segment as the Long-Term Contractor's service area or reservation for purposes of scheduling priority under Section 11 of this Agreement.

11.1.2 Second, through 2030, Water Delivery Schedules pursuant to Agricultural Settlement Pool Contracts.

11.1.3 Third, Water Delivery Schedules pursuant to CAWCD Wheeling Contracts that are associated with Verified Additional Operational Capability.

11.1.4 Fourth, Water Delivery Schedules pursuant to Long-Term Contracts for deliveries for leases, exchanges or underground storage within a Segment located Downstream of the Long-Term Contractor's service area or reservation.

11.1.5 Fifth, Water Delivery Schedules pursuant to Excess Water Contracts, other than Agricultural Settlement Pool Contracts.

11.1.6 Sixth, Water Delivery Schedules for Non-Project Water, other than Firming Water, pursuant to Reclamation Wheeling Contracts or Federal Arrangements for Indian and Federal agency purposes.

11.1.7 Seventh, Water Delivery Schedules for Non-Project Water, other than Firming Water, pursuant to Reclamation Wheeling Contracts or Federal Arrangements for purposes other than Indian and Federal agency purposes.

11.1.8 Eighth, Water Delivery Schedules pursuant to CAWCD Wheeling Contracts that are associated with Projected Additional Operational Capability.

11.2 During Water Shortage, Firming Water shall carry the scheduling priority of the Project Water it replaces.

11.3 Any further reductions to Water Delivery Schedules that are necessary within the priorities as described in Subsection 11.1 of this Agreement shall be based on any applicable provisions specified in water delivery contracts, and if further necessary, on a *pro-rata* basis.

11.4 This Section is not intended to, and shall not be construed to, contravene the provisions of any Long-Term Contract, or lease pursuant to a Long-Term Contract.

11.5 CAWCD will indemnify the United States from and against all damages resulting from suits, actions, or claims arising out of CAWCD's implementation of this Section of the Agreement in developing the Annual Operating Plan, except to the extent that such suits, actions, or claims challenge the scheduling priorities set forth in this Section of the Agreement.

12. **WATER QUALITY:**

12.1 Reclamation and CAWCD shall establish uniform water quality standards for any Non-Project Water introduced into the CAP System.

12.2 The party introducing the Non-Project Water into the CAP System, including CAWCD or Reclamation, shall be responsible for compliance with the standards of Subsection 12.1 of this Agreement.

12.3 The party introducing the Non-Project Water into the CAP System shall indemnify and hold the United States and CAWCD harmless from and against all claims, damages, costs and other liabilities resulting from that party's introduction of Non-Project Water into the CAP System.

13. **CAP SYSTEM IMPROVEMENT PROJECTS:**

13.1 System Improvement Projects shall be modifications of the CAP System, which increase the Operational Capability of the CAP System.

13.2 Prior to commencing any System Improvement Project, CAWCD shall submit a proposal for the System Improvement Project to Reclamation, together with CAWCD's estimate of the associated increase in Operational Capability if the System Improvement Project were to be completed, a technical justification for the CAWCD estimate, and the results of such additional analysis as Reclamation determines to be appropriate.

13.3 Reclamation, within 60 days of receiving the information specified under Subsection 13.2, of this Agreement, shall evaluate the proposed System Improvement Project and determine if the proposed System Improvement Project qualifies as a "Substantial Change" under Article 12 of the Operating Agreement.

13.4 If, under Subsection 13.3 of this Agreement, Reclamation determines the proposed System Improvement Project qualifies as a "Substantial Change" under Article 12 of the Operating Agreement, Reclamation, in consultation with CAWCD and within 180 days of receiving the information specified under Subsection 13.2 of this Agreement, shall evaluate the proposed System Improvement Project and make a determination of Projected Additional Operational Capability, which shall be quantified in acre-feet per annum.

13.5 Upon Reclamation's determination of Projected Additional Operational Capability under Subsection 13.4 of this Agreement, CAWCD may deliver Non-Project Water pursuant to CAWCD Wheeling Contracts, approved by Reclamation, up to the amount of the Projected Additional Operational Capability, and subject to the eighth priority as defined in the Scheduling Priorities for CAP System Use in Section 11 of this Agreement.

13.6 Reclamation shall perform all necessary environmental compliance for the proposed System Improvement Project. The length of time required to perform such environmental compliance will depend upon the scope of the proposed System Improvement Project.

13.7 CAWCD may proceed with the proposed System Improvement Project after Reclamation completes environmental compliance under Subsection 13.6 of this Agreement and provides CAWCD with written consent for the proposed System Improvement Project.

13.8 Upon completion of a System Improvement Project that received a determination of Projected Additional Operational Capability under Subsection 13.4 of this Agreement, CAWCD shall provide Reclamation with written notice that the System Improvement Project has been completed. The notice shall include CAWCD's estimate of the actual additional Operational Capability resulting from the System Improvement Project, a technical justification for the CAWCD estimate, and the results of such additional analysis as Reclamation determines to be appropriate.

13.9 Reclamation, in consultation with CAWCD, shall evaluate the completion of the System Improvement Project in accordance with the terms of the Operating Agreement and shall issue a Notice of Completion.

13.10 Within 180 days of issuance of a Notice of Completion under Subsection 13.9 of this Agreement, Reclamation, in consultation with CAWCD, shall:

13.10.1 Evaluate CAWCD's estimate of the actual associated increase in Operational Capability and the CAWCD technical justification; and

13.10.2 Make a determination of Verified Additional Operational Capability.

13.11 Upon Reclamation's determination of Verified Additional Operational Capability under Subsection 13.10 of this Agreement, CAWCD may deliver Non-Project Water pursuant to CAWCD

Wheeling Contracts, approved by Reclamation, up to the amount of the Verified Additional Operational Capability, and subject to the third priority as defined in the Scheduling Priorities for CAP System Use in Section 11 of this Agreement.

13.12 Title to any modifications of the CAP System resulting from a System Improvement Project shall remain with the United States.

13.13 CAWCD will indemnify the United States from and against all damages resulting from suits, actions, or claims arising out of any determination of Projected Additional Operational Capability or Verified Additional Operational Capability by Reclamation under this Agreement.

14. **FEES, CHARGES, AND REVENUES:**

14.1 Long-Term Contractors exchanging Project Water for Non-Project Water pursuant to Section 9 of this Agreement shall pay the Fixed OM&R and Pumping Energy Charge established annually by CAWCD, and applicable capital charges, except any such charges paid by the United States on behalf of the Long-Term Contractor.

14.2 Parties taking delivery of Non-Project Water pursuant to CAWCD Wheeling Contracts, Reclamation Wheeling Contracts or Federal Arrangements shall pay the same Fixed OM&R and Pumping Energy Charge established annually by CAWCD for Project Water.

14.3 A Capital Equivalency Charge (as that term is defined in Exhibits B and C to this Agreement) shall be applied to Non-Project Water as set forth in CAWCD Wheeling Contracts, Reclamation Wheeling Contracts or Federal Arrangements. Deliveries of Non-Project Water for Firming are not subject to Capital Equivalency Charges. CAWCD shall deposit Capital Equivalency Charge revenues into the Lower Colorado River Basin Development Fund.

14.4 Firming Agreements authorized under Subsections 8.3 and 8.4 of this Agreement may contain provisions for CAWCD to collect charges based on CAWCD estimates of CAWCD's actual expenses to be incurred in the development and delivery of Firming Water and the revenues collected from such charges shall be available for use by CAWCD solely for such purposes.

14.5 Fixed OM&R Charges shall not be used to pay the costs to complete a System Improvement Project.

15. **NO CONFLICT; NO DELEGATION OF AUTHORITY:** Nothing in this Agreement, or any Annual Operating Plan, is intended to contravene or diminish the Secretary's or CAWCD's rights and

obligations under the provisions of the Master Repayment Contract, the Stipulation, any Long-Term Contract or Federal law. In the case of a conflict between this Agreement and pre-existing agreements between Reclamation and CAWCD (e.g., the Master Repayment Contract, Repayment Stipulation, and the Operating Agreement), those pre-existing agreements will prevail. Nothing in this Agreement shall be construed as a delegation of authority to perform or interpret inherently Federal functions.

16. **GENERAL PROVISIONS:**

16.1 NOTICES: Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of CAWCD, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, 500 Date Street, Boulder City, NV 89005, and the Phoenix Area Office Area Manager, 6150 West Thunderbird Road, Glendale AZ 85306-4001, and on behalf of the United States, when mailed, postage prepaid, or delivered to the General Manager of the Central Arizona Water Conservation District, 23636 North 7th Street, Phoenix, AZ 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.

16.2 CONTINGENT ON APPROPRIATIONS OR ALLOTMENT OF FUNDS: The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve CAWCD from any obligations under this Agreement. No liability shall accrue to the United States in case funds are not appropriated or allotted.

16.3 OFFICIALS NOT TO BENEFIT: No Member of or Delegate to the Congress, Resident Commissioner, or official of CAWCD shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

16.4 CHANGES IN CAWCD'S ORGANIZATION: While this Agreement is in effect, no change may be made in CAWCD's organization, by exclusion of lands, by dissolution, consolidation, merger or otherwise which may affect the respective rights, obligations, privileges, and duties of either the United States or CAWCD under this Agreement, except upon the Secretary's written consent.

16.5 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED: The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any right or interest therein by either Party shall be valid until approved in writing by the other Party.

16.6 BOOKS, RECORDS, AND REPORTS: CAWCD shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including CAWCD's financial transactions; water supply data; project operation, maintenance and replacement logs; project land and rights-of-way use agreements; and other matters that the Secretary may require. Reports thereon shall be furnished to the Secretary in such form and on such date or dates as the Secretary may require. Subject to applicable Federal laws and regulations, each Party to this Agreement 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 Agreement.

16.7 RULES, REGULATIONS, AND DETERMINATIONS:

16.7.1 The Parties hereto agree that the delivery of water or the use of Federal facilities pursuant to this Agreement is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

16.7.2 The Secretary shall have the right to make determinations necessary to administer this Agreement that are consistent with its expressed and implied provisions, the laws of the United States and the State of Arizona, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with CAWCD.

16.8 EXHIBITS MADE PART OF AGREEMENT: The Exhibits to this Agreement may change during the term of this Agreement, but only with the written agreement of both parties hereto. The initial Exhibits are attached hereto and made a part hereof, and each shall be in force and effect in accordance with its respective provisions until superseded by a subsequent exhibit executed by the Parties hereto.

16.9 CONTRACT DRAFTING CONSIDERATIONS: This Agreement has been negotiated and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Agreement pertains. Articles 1 through 16 of this Agreement have been drafted, negotiated, and reviewed by the Parties hereto, and no one Party shall be considered to have drafted the stated articles.

IN WITNESS WHEREOF, the Parties have executed this CAP System Use Agreement the day and year first above written.

THE UNITED STATES OF AMERICA

By: ______________________________
Regional Director
Lower Colorado Region
Bureau of Reclamation

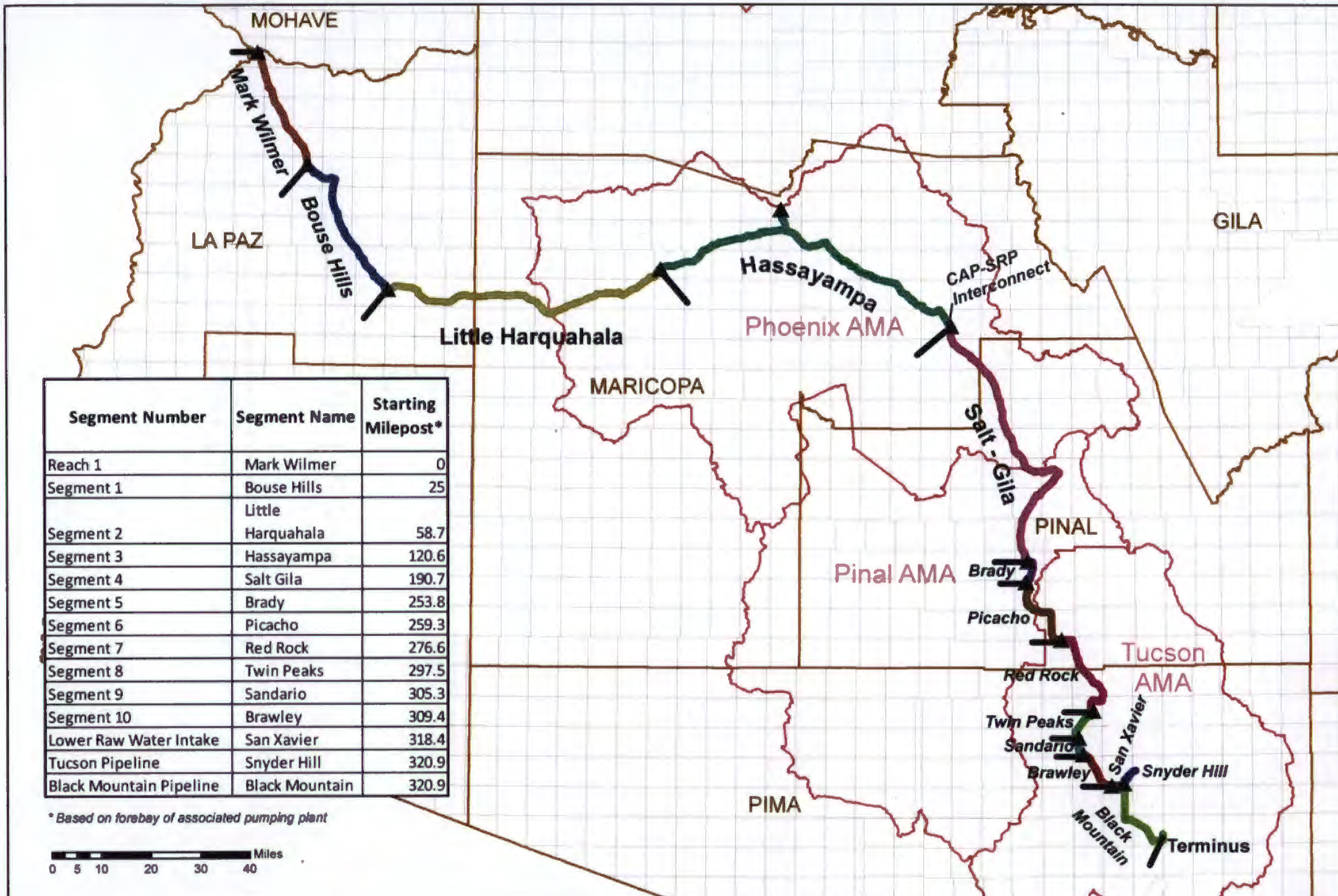
CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Approved as to Form:

By: ______________________________
Secretary

By: ______________________________
President

EXHIBIT A



Segment Number	Segment Name	Starting Milepost*
Reach 1	Mark Wilmer	0
Segment 1	Bouse Hills	25
Segment 2	Little Harquahala	58.7
Segment 3	Hassayampa	120.6
Segment 4	Salt Gila	190.7
Segment 5	Brady	253.8
Segment 6	Picacho	259.3
Segment 7	Red Rock	276.6
Segment 8	Twin Peaks	297.5
Segment 9	Sandario	305.3
Segment 10	Brawley	309.4
Lower Raw Water Intake	San Xavier	318.4
Tucson Pipeline	Snyder Hill	320.9
Black Mountain Pipeline	Black Mountain	320.9

** Based on forebay of associated pumping plant*

Central Arizona Project System Use Agreement: Exhibit A

Date: December 2016

Location: X:\Maps\Legal\SUA_Exhibit_A_Segments.mxd

Projection: NAD 83, HARN, AZ State Plane, Central Zone, Intl. Feet

CAP

EXHIBIT B

Standard Form of CAWCD Wheeling Contract

WHEELING CONTRACT

BETWEEN

THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT AND

[ENTITY]

This CAWCD Wheeling Contract ("Contract") is made this _____ day of _____________, 20__, between the Central Arizona Water Conservation District ("CAWCD"), a political subdivision of the State of Arizona, and [Entity] (Insert short-form reference, if desired, i.e. "City").

RECITALS

A. WHEREAS, the United States and CAWCD have entered into the CAP System Use Agreement between the United States and the Central Arizona Water Conservation District ("CAP System Use Agreement"), dated [ ];

B. WHEREAS, the CAP System Use Agreement authorizes CAWCD to transport Non-Project Water through the CAP System under a CAWCD Wheeling Contract between CAWCD and other parties, subject to the approval of the United States;

C. WHEREAS, in Section 6 of the CAP System Use Agreement, the United States approved a standard form of CAWCD Wheeling Contract.

D. WHEREAS, the [Entity] desires to wheel Non-Project Water through the CAP System; and

D. WHEREAS, CAWCD and the [Entity] desire to enter into this Contract to set forth the terms and conditions under which CAWCD will transport Non-Project Water through the CAP System for the use or benefit of the [Entity].

1. AGREEMENT:

In consideration of the mutual covenants and agreements set forth below, and intending to be legally bound, CAWCD and the [Entity] hereby agree as follows:

2. DEFINITIONS:

Definitions included in the CAP System Use Agreement are applicable to this Contract. The first letters of terms so defined are capitalized herein. In addition, the following terms, when capitalized, have the meanings indicated:

2.1 Capital Equivalency Charge: An amount equal to the M&I water service capital charge, as published in CAWCD's annual rate schedule for a particular Year, multiplied by the maximum number of acre-feet per year of Wheeled Water that may be transported through the CAP System under this Contract, as shown in Exhibit 2.6 hereto, regardless of the amount to be transported in any given Year.

2.2 Place of Use: The service area or place of use depicted on the map in Exhibit 2.2 hereto.

2.3 Point(s) of Receipt: The location(s) designated in Exhibit 2.3, hereto, where Wheeled Water will enter the CAP System.

2.4 Point(s) of Delivery: The location(s) designated in Exhibit 2.4, hereto, where Wheeled Water is diverted from the CAP System for delivery to or on behalf of the [Entity].

2.5 System Improvement Projects: The project(s) described in Exhibit 2.5 hereto to modify the CAP System to create Verified Additional Operational Capability in accordance with the System Use Agreement.

2.6 Wheeled Water: The Non-Project Water, of the type or source available to the [Entity] under a contract, decree, or statute, all as specified in Exhibit 2.6 to this Contract, to be transported through the CAP System pursuant to this Contract.

3. TERM:

This Contract shall become effective on the date first written above and shall remain in effect until the termination of [the Entity's] contract or other right to Wheeled Water specified in Subsection 2.6 of this Contract, unless otherwise agreed to in writing by the parties to this Contract.

4. TRANSPORTATION OF WHEELED WATER BY CAWCD:

CAWCD shall transport Wheeled Water from the Point(s) of Receipt to the Point(s) of Delivery in accordance with the terms of this Contract, subject to the scheduling priorities for use of the CAP System in Section 11 of the CAP System Use Agreement.

5. AVAILABILITY OF VERIFIED ADDITIONAL OPERATIONAL CAPABILITY:

5.1 Pursuant to the CAP System Use Agreement, Reclamation has made a determination of Projected Additional Operational Capability. This determination is attached hereto as Exhibit 5.1.

5.2 After, in accordance with the terms of the CAP System Use Agreement, Reclamation issues a final determination of Verified Additional Operational Capability, CAWCD will provide a copy of such final determination to the [Entity]. The final determination of Verified Additional Operational Capability will be attached to this Contract as Exhibit 5.2 hereto and will supersede the determination of Projected Additional Operational Capability, and Exhibit 5.1, for purposes of implementation of this Contract.

5.3 Reclamation's determination of Verified Additional Operational Capability may be greater, lesser, or equal to Reclamation's determination of Projected Additional Operational Capability. If Reclamation's determination of Verified Additional Operational Capability is greater or lesser than its determination of Projected Additional Operational Capability, CAWCD and [Entity] agree to amend Exhibit 2.6 to be consistent with Reclamation's determination of Verified Additional Operational Capability. If the total volume of water to be transported under issued CAWCD Wheeling Contracts exceeds the Verified Additional Operational Capability of the associated System Improvement Project, the volume of water to be transported under such CAWCD Wheeling Contracts will be reduced on a pro rata basis.

[In the event that this Contract is being entered into after Reclamation has made a determination of Verified Additional Operational Capability, then 5.1, 5.2 and 5.3 will be replaced with the following: "5.1 Pursuant to the CAP System Use Agreement, Reclamation has made a determination of Verified Additional Operational Capability. This determination is attached hereto as Exhibit 5.1."]

6. ENVIRONMENTAL CLEARANCE:

Notwithstanding any other provision of this Contract, Wheeled Water shall not be delivered to the [Entity] unless and until the [Entity] has obtained final environmental clearance from the United States for the transportation of Wheeled Water through the CAP System, and for the system or systems through which Wheeled Water is to be conveyed to the Point(s) of Receipt, and the system or systems through which Wheeled Water is to be conveyed from the Point(s) of Delivery to the Place of Use. Such system(s) shall include all pipelines, canals, distribution systems, treatment, storage, and other facilities through or in which Wheeled Water is conveyed. Wheeled Water shall only be transported for the [Entity] in a manner consistent with the final environmental clearances from the United States.

7. POINT(S) OF DELIVERY, POINT(S) OF RECEIPT, MEASUREMENT AND RESPONSIBILITY:

7.1 CAWCD shall transport Wheeled Water from the Point(s) of Receipt to the Point(s) of Delivery for delivery to or for the benefit of the [Entity].

7.2 The [Entity] shall secure from CAWCD all necessary land use permits, as provided under Article 7.2.8 of the Operating Agreement, for facilities to be located within the CAP System right-of-way for the purpose of conveying Wheeled Water to the CAP System Point(s) of Receipt and from the Point(s) of Delivery to the Place of Use. Unless CAWCD and the [Entity] agree in writing to the contrary, the [Entity] shall construct and install, at its sole cost and expense: (i) all facilities required to transport Wheeled Water to the Point(s) of Receipt; and (ii) all facilities required to transport Wheeled Water from the Point(s) of Delivery to the Place of Use. The [Entity] shall furnish to CAWCD, drawings and specifications showing all such facilities to be constructed or installed within the CAP System right-of-way, and shall obtain CAWCD's written approval before commencing construction or installation of such facilities. All facilities constructed, installed, operated or maintained on the CAP System right-of-way by or for the [Entity] shall be subject to such further agreements and to such restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by CAWCD.

7.3 Upon termination of this Contract and written notice from CAWCD, the [Entity] shall promptly remove, at its sole cost and expense, all facilities constructed or installed on the CAP System right-of-way under this Contract and restore said right-of-way and all Project facilities affected to their condition immediately prior to the construction or installation of such connection facilities. If the [Entity] fails to remove said facilities and restore said right-of-way and Project facilities within thirty (30) days after receiving any written notice from CAWCD to do so, CAWCD may remove said facilities and restore said right-of-way and Project facilities at the [Entity]'s cost and expense. Within thirty (30) days after receiving written demand from CAWCD to do so, the [Entity] shall pay CAWCD, as specified in such written demand, for all costs and expenses incurred by CAWCD in removing said facilities and restoring said right-of-way and Project facilities.

7.4 When making or considering modifications to the CAP System, CAWCD shall comply with the terms of Article 12 of the Operating Agreement. If modification of the CAP System is required to allow for the interconnection between the CAP System and the [Entity]'s facilities constructed on the CAP System right-of-way, including construction of one or more additional CAP turnouts, CAWCD shall make such interconnection modifications at the sole expense of the Entity which shall advance fund CAWCD's costs.

7.5 All Wheeled Water shall be measured with equipment that complies with CAWCD and United States standards and shall be operated and maintained by CAWCD. Upon request of the Entity, the accuracy of such measurements shall by investigated by CAWCD and the Entity, and any errors which are mutually determined to have occurred shall be adjusted; Provided, however, if CAWCD and the [Entity] cannot agree on the required adjustment, CAWCD's determination shall be conclusive, subject to review and revision by the Secretary.

7.6 If the [Entity] intends to transport Wheeled Water through facilities on the CAP System right-of-way that are owned or operated by entities other than the United States or CAWCD, the use by the [Entity] of such facilities shall be the subject of written agreement(s) between the [Entity] and the owner(s) or operator(s) of such facilities.

7.7 Neither the United States nor CAWCD shall be responsible for the control, carriage, handling, use, disposal, or distribution of water up to the Point(s) of Receipt or beyond the Point(s) of Delivery. Except for such claims, costs or damages arising from acts of negligence and committed by the United States or its employees, agents, or contractors for which the United States is found liable under the Federal Tort Claims Act, the [Entity] shall indemnify and hold the United States and CAWCD 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 control, carriage, handling, use, disposal, or distribution of water up to the Point(s) of Receipt or beyond the Point(s) of Delivery.

8. PLACE OF USE:

Wheeled Water shall be used within the Place of Use.

9. INTERRUPTIONS AND REDUCTIONS:

CAWCD may discontinue or reduce the quantity of Wheeled Water to be transported as herein provided for the purposes of investigation, inspection, construction, testing, maintenance, repair, or replacement of any of the Project facilities or any part thereof. CAWCD shall attempt to coordinate any such discontinuance or reduction with the [Entity] and give the [Entity] due notice in advance of such discontinuance or reduction. In case of emergency, no notice need be given. The United States, its officers, agents, and employees, and CAWCD, its officers, agents, and employees, shall not be liable for damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in transportation of Wheeled Water occurs. If any such discontinuance or temporary reduction results in transportation for the [Entity] of less water than what has been paid for in advance, the [Entity] shall be reimbursed or given credit for the appropriate proportion of Fixed OM&R Charges and Pumping Energy charges prior to the date of the entities next payment.

10. WATER QUALITY:

10.1 Neither the United States nor CAWCD warrants the quality of water transported through the CAP System to the [Entity] pursuant to this Contract and the United States and CAWCD are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any water transported through the CAP System. The [Entity] assumes all responsibility for purifying or otherwise treating Wheeled Water received at the Point of Delivery to meet applicable water quality standards established by federal, state or local authorities. The [Entity] waives its rights to make a claim against the United States, CAWCD or any Long-Term Contractor or contractor for Excess Water service on account of the quality of Wheeled Water or any changes in water quality caused by the commingling of Wheeled Water with Project Water and/or Non-Project water.

10.2 The [Entity] shall comply with and pay for all water quality monitoring, water quality reporting and water quality compliance and treatment requirements prescribed by CAWCD or the United States applicable to the transportation of Wheeled Water under this Contract, which requirements may be amended by CAWCD and/or the United States from time to time.

10.3 The [Entity] shall comply with all applicable state and federal laws, rules, and regulations governing the transportation of Wheeled Water under this Contract. All references in this Contract to laws, rules and regulations include all amendments and successor laws, rules, and regulations to such laws, rules and regulations.

10.4 Nothing in this Contract shall be construed to require CAWCD to receive or transport Wheeled Water if such water fails to meet water quality standards established by CAWCD and the United States under Subsection 12.1 of the CAP System Use Agreement, which water quality standards may be amended by CAWCD and the United States from time to time. Further, nothing in this Contract shall be construed to require that CAWCD receive or transport Wheeled Water from any source when such receipt or transportation is likely to result in a violation of then existing federal and state laws or regulations regarding water quality. CAWCD has the right, without liability of any kind, to refuse to receive or transport Wheeled Water if such water fails to meet water quality standards established by CAWCD and the United States and/or if such transportation is likely to result in a violation of then existing federal and state laws or regulations regarding water quality.

10.5 The [Entity] shall indemnify and hold harmless CAWCD and the United States from and against any and all claims, damages, costs and other liabilities resulting from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System, whether or not asserted by a third party, and, at CAWCD's election, defend CAWCD against any such losses, claims, damages or other liabilities asserted by a third party.

10.6 CAWCD shall cooperate fully with the [Entity] in the defense of any and all claims, damages, costs and other liabilities asserted by a third party under this Section 10 and shall provide the [Entity] with all information and records necessary for the [Entity] to defend against such claims, damages, costs and other liabilities.

10.7 The [Entity]'s obligation to indemnify under this Section 10 shall encompass only:

10.7.1 The payment of claims, damages, costs and other liabilities that have been determined by mutual agreement of the [Entity] and CAWCD, and, if applicable, the United States, or by arbitration, or a court to have resulted from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System.

10.7.2 All costs incurred by CAWCD in defending against any and all claims, damages, costs and other liabilities asserted by a third party resulting from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System and all costs incurred by CAWCD in cooperating with the [Entity] under Subsection 10.6 of this Contract.

11. LOSSES:

Except for any volume of water transported under this Contract that is Firming Water, as that term is defined in the CAP System Use Agreement, the [Entity] shall be assessed uniform losses of five percent (5%) against all Wheeled Water transported through the CAP System under this Contract such that the amount of Wheeled Water delivered at Point(s) of Delivery under this Contract will be five percent (5%) less than the amount of Wheeled Water entering the CAP System at the Point(s) of Receipt. Water transported under this Contract that is Firming Water shall bear no losses.

12. RIGHT TO CONTRACT:

CAWCD and the United States retain the right to contract directly with other entities desiring to transport Non-Project Water through the CAP System.

13. PROCEDURE FOR SCHEDULING TRANSPORTATION OF WHEELED WATER:

13.1 On or before October 1 of each Year, the [Entity] shall submit in writing to CAWCD a Water Delivery Schedule indicating the amounts of Wheeled Water the [Entity] desires to be transported from the Point(s) of Receipt to the Point(s) of Delivery during each month of the following Year, taking into account applicable losses.

13.2 Each year, after receipt of the schedule, CAWCD shall review it together with all other Water Delivery Schedules, and shall make such adjustments to the Entity's Water Delivery Schedule as are necessary to accommodate the CAP System physical and operational constraints and scheduling priorities identified in Subsection 10.2.1 and Section 11 of the CAP System Use Agreement, respectively.

13.3 On or before December 15 of each Year, CAWCD shall provide the [Entity] with a copy of the final Water Delivery Schedule for the following Year, which shall show the amount of Wheeled Water to be transported from the Point(s) of Receipt to the Point(s) of Delivery during each month of that Year and shall reflect applicable losses.

13.4 The monthly Water Delivery Schedule may be amended upon the [Entity]'s written request to CAWCD. Proposed amendments shall be submitted by the [Entity] to CAWCD no later than fifteen (15) days before the desired change is to become effective. CAWCD may modify proposed amendments to the [Entity's] monthly Water Delivery Schedule as necessary to conform to previously approved Water Delivery Schedules. CAWCD shall notify the [Entity] of its action on the Entity's requested schedule modification within ten (10) days of CAWCD's receipt of such request.

13.5 In any one month during the Year, the [Entity] shall not be entitled to the transportation of greater than eleven percent (11%) of the maximum number of acre-feet per year of Wheeled Water that may be transported through the CAP System under this Contract, after applicable losses, as shown in Exhibit 2.6 hereto. If requested by the [Entity], CAWCD may, at its sole discretion, transport more than eleven percent (11%) of the Wheeled Water in a month only after satisfying all Water Delivery Schedules with the same CAP System scheduling priority as set forth in Section 11 of the CAP System Use Agreement.

13.6 The [Entity] shall indemnify and hold CAWCD, its officers, agents and employees, and the United States, its officers, agents and employees, harmless from all damages and any claims of damage of any nature whatsoever arising out of or connected with the actions of CAWCD regarding water transportation schedules furnished by or to the [Entity].

14. WATER TRANSPORTATION CHARGES:

14.1 Annual Charges:

14.1.1 Fixed OM&R Charge: The [Entity] shall pay in advance the same Fixed OM&R Charge established annually by CAWCD for the delivery of Project Water in the CAP System. On or before the date of execution of this Contract, or as soon thereafter as is practicable, CAWCD shall notify the [Entity] of the Fixed OM&R Charge for the initial Year of water transportation ("initial Year"). Within a reasonable time of receipt of such notice, but prior to the transportation of Wheeled Water, the [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of the initial Year, the Fixed OM&R Charge due for transportation of Wheeled Water scheduled for transportation in the initial Year. For each subsequent Year, CAWCD will establish the Fixed OM&R Charge and shall notify the [Entity] of the Fixed OM&R Charge for such subsequent Year on or before December 15 preceding each subsequent Year. The [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of said subsequent Year, the Fixed OM&R Charge due for transportation of Wheeled Water scheduled for transportation in said subsequent Year.

14.1.2 Pumping Energy Charge: The [Entity] shall pay in advance the same Pumping Energy Charge established annually by CAWCD for the delivery of Project Water in the CAP System. On or before the date of execution of this Contract, or as soon thereafter as is practicable, CAWCD shall notify the [Entity] of the Pumping Energy Charge for the initial Year of water transportation. Within a reasonable time of receipt of such notice, but prior to the transportation of Wheeled Water, the [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of the initial Year, the Pumping Energy Charge due for transportation of Wheeled Water scheduled for transportation in the initial Year. For each subsequent Year, CAWCD will establish the Pumping Energy Charge and shall notify the [Entity] of the Pumping Energy Charge for such subsequent Year on or before December 15 preceding each subsequent Year. The [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of said subsequent Year, the Pumping Energy Charge due for transportation of Wheeled Water scheduled for transportation in said subsequent Year. The [Entity] shall receive credit for the Pumping Energy Charges associated with any Wheeled Water scheduled for transportation that is not transported through the CAP System to the Point(s) of Delivery.

14.1.3 Capital Equivalency Charge: In addition to the Fixed OM&R Charges and the Pumping Energy Charges required in Subsections 14.1.1 and 14.1.2 of this Contract, each Year the [Entity] shall make payment to CAWCD in equal semiannual installments of a Capital Equivalency Charge. Until fulfillment of CAWCD's repayment obligation, the amount of this charge in any Year shall be equal to the M&I water service capital charge, as published in CAWCD's annual rate schedule for that Year, multiplied by the maximum number of acre-feet per year of Wheeled Water that may be transported through the CAP System under this Contract, regardless of the amount to be transported in any given Year, except that the amount of the Capital Equivalency Charge will be reduced for each acre-foot of Wheeled Water that the [Entity] schedules to be delivered for Firming in that Year. CAWCD and the United States will coordinate and consult regarding any appropriate charge for transportation of Wheeled Water following fulfillment of CAWCD's repayment obligation in addition to the charges set forth under Subsections 14.1.1 and 14.1.2 of this Contract. The Capital Equivalency Charge payment for the initial Year shall be advanced to CAWCD in equal semiannual installments on or before December 1 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent Year, payments by the [Entity] in accordance with the foregoing provisions shall be made in equal semiannual installments on or before the December 1 preceding said subsequent Year and the June 1 of said subsequent Year as may be specified by CAWCD in written notices to the [Entity]. CAWCD shall deposit the Capital Equivalency Charge revenues to the Lower Colorado River Basin Development Fund.

14.2 The payment of all water transportation charges when due as stipulated in Subsections 14.1.1, 14.1.2 and 14.1.3 of this Contract is a condition precedent to the transportation of Wheeled Water through the CAP System.

14.3 The obligation of the [Entity] to pay CAWCD as provided in this Contract is a general obligation of the [Entity] notwithstanding the manner in which the obligation may be distributed among the [Entity]'s water users and notwithstanding the default of individual water users in their obligations to the [Entity].

15. CHARGES FOR DELINQUENT PAYMENTS AND REMEDIES FOR FAILURE TO PAY:

15.1 The [Entity] shall be subject to interest, administrative and penalty charges on delinquent installments or payments. The [Entity] shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the [Entity] shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the [Entity] shall pay an additional penalty charge of six percent (6%) per year for each day the payment is delinquent beyond the due date. Further, the Entity shall pay any fees incurred for debt collection services associated with a delinquent payment.

15.2 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 one-half percent (0.5%) per month. The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

15.3 In the event any delinquent amount is not paid by the [Entity] within thirty (30) days after receipt by the [Entity] of written notice by CAWCD to the [Entity] of the delinquency, CAWCD shall have the right, without liability of any kind, to refuse to transport Wheeled Water so long as the said amount remains unpaid and may terminate this Contract. Nothing herein shall limit the rights of CAWCD to use any available legal remedy to effect collection of said amounts.

16. RULES, REGULATIONS AND DETERMINATIONS:

CAWCD and the [Entity] agree that the transportation of Wheeled Water pursuant to this Contract is subject to Federal Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law. The Secretary shall have the right to make determinations necessary to administer this Contract that are consistent with its express and implied provisions, the laws of the United States and the State of Arizona, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with CAWCD and [the Entity].

17. COMPLIANCE WITH ENVIRONMENTAL LAWS:

The [Entity], in carrying out this Contract, shall comply with all applicable environmental laws and regulations of the United States and the State of Arizona and shall obtain all required approvals, permits, or licenses from the appropriate Federal, State, or local authorities.

18. UNCONTROLLABLE FORCES:

Neither CAWCD nor the Entity shall be considered to be in default in the performance of any of its obligations hereunder (other than the obligations of the Entity to make payment for service hereunder) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces" shall mean any cause beyond the control of the party unable to perform such obligation, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities and restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome.

19. NOTICES:

Any notice, demand, or request authorized or required by this Contract shall be in writing and delivered in person, or sent by registered or certified mail, postage prepaid, to:

CAWCD:

Central Arizona Water Conservation District
General Manager
P.O. Box 43020
Phoenix, Arizona 85090-3020

[ENTITY]:

20. WAIVER:

The waiver by either Party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.

21. GOVERNING LAW:

This Contract is made under, and shall be governed by, applicable Federal law and, if none, the laws of the State of Arizona.

22. ASSIGNMENT:

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 shall be valid until approved by CAWCD and the United States.

23. EXHIBITS:

The exhibits attached hereto may be modified by mutual consent of CAWCD and the [Entity], subject to the approval of the United States. The initial exhibits are attached hereto and each is incorporated into this Contract until superseded by a subsequent exhibit which shall then be incorporated into this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract effective the day and year first above-written.

[ENTITY]

Approved as to Form:

By:__________________________
Its:

By:__________________________
Its:

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Approved as to Form:

By:__________________________
Secretary

By:__________________________
President

APPROVAL OF THE UNITED STATES:

In accordance with Article 8.18 of the Master Repayment Contract, the foregoing Wheeling Contract between the Central Arizona Water Conservation District and the [Entity] is hereby approved.

United States of America

By:______________________

[PXAO Area Mgr or LCR Regional Director]

Bureau of Reclamation

EXHIBITS (<u>not</u> attached)

- Exhibit 2.2: Place of Use
- Exhibit 2.3: Locations of Point(s) of Receipt
- Exhibit 2.4: Location of Point(s) of Delivery
- Exhibit 2.5: System Improvement Project(s)
- Exhibit 2.6: Description of Wheeled Water
- Exhibit 5.1: Reclamation's initial determination of Projected Additional Operational Capability.
- Exhibit 5.2: Reclamation's final determination of Verified Additional Operational Capability
- Exhibit 10.2 (Possible): Water Quality Monitoring and Reporting Plan

EXHIBIT C

STANDARD TERMS AND CONDITIONS FOR RECLAMATION WHEELING CONTRACTS TO TRANSPORT NON-PROJECT WATER

1. DEFINITIONS:

Definitions included in the CAP System Use Agreement between the United States and the Central Arizona Water Conservation District dated [ ] ("CAP System Use Agreement") are applicable to this [Reclamation Wheeling Contract ("Contract")]. The first letters of terms so defined are capitalized herein. In addition, the following terms, when capitalized, have the meanings indicated:

1.1 Capital Equivalency Charge: An amount equal to the M&I water service capital charge, as published in CAWCD's annual rate schedule for a particular Year, multiplied by the maximum number of acre-feet per year of Wheeled Water that may be transported through the CAP System under this Contract, as shown in Exhibit 1.5 hereto, regardless of the amount to be transported in any given Year.

1.2 Place of Use: The service area or place of use depicted on the map in Exhibit 1.2 hereto.

1.3 Point(s) of Receipt: The location(s) designated in Exhibit 1.3, hereto, where Wheeled Water will enter the CAP System.

1.4 Point(s) of Delivery: The location(s) designated in Exhibit 1.4, hereto, where Wheeled Water is diverted from the CAP System for delivery to or on behalf of the [Entity].

1.5 Wheeled Water: The Non-Project Water, of the type or source available to the [Entity] under a contract, decree, or statute, all as specified in Exhibit 1.5 to this Contract, to be transported through the CAP System pursuant to this Contract.

2. TERM:

This Contract shall become effective on the date first written above and shall remain in effect until the termination of [the Entity's] contract or other right to Wheeled Water specified in Subsection 1.5 of this Contract, unless otherwise agreed to in writing by the parties to this Contract.

3. ENVIRONMENTAL CLEARANCE:

Notwithstanding any other provision of this Contract, Wheeled Water shall not be delivered to the [Entity] unless and until the [Entity] has obtained final environmental clearance from the United States for the transportation of Wheeled Water through the CAP System, and for the system or systems through which Wheeled Water is to be conveyed to the Point(s) of Receipt, and for the system or systems through which Wheeled Water is to be conveyed from the Point(s) of Delivery to the Place of Use. Such system(s) shall include all pipelines, canals, distribution systems, treatment, storage, and other facilities through or in which Wheeled Water is conveyed. Wheeled Water shall only be transported for the [Entity] in a manner consistent with the final environmental clearances from the United States.

4. POINT(S) OF DELIVERY, POINT(S) OF RECEIPT, MEASUREMENT AND RESPONSIBILITY:

4.1 The United States will coordinate with CAWCD for the transportation of Wheeled Water from the Point(s) of Receipt to the Point(s) of Delivery for delivery to or for the benefit of the [Entity].

4.2 The [Entity] shall secure from CAWCD all necessary land use permits, as provided under Article 7.2.8 of the Operating Agreement, for facilities to be located within the CAP System right-of-way for the purpose of conveying Wheeled Water to the CAP System Point(s) of Receipt and from the Point(s) of Delivery to the Place of Use. Unless CAWCD and the [Entity] agree in writing to the contrary, the [Entity] shall construct and install, at its sole cost and expense: (i) all facilities required to transport Wheeled Water to the Point(s) of Receipt; and (ii) all facilities required to transport Wheeled Water from the Point(s) of Delivery to the Place of Use. The [Entity] shall furnish to CAWCD, drawings and specifications showing all such facilities to be constructed or installed within the CAP System right-of-way, and shall obtain CAWCD's written approval before commencing construction or installation of such facilities. All facilities constructed, installed, operated or maintained on the CAP System right-of-way by or for the [Entity] shall be subject to such further agreements and to such restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by CAWCD.

4.3 Upon termination of this Contract and written notice from CAWCD, the [Entity] shall promptly remove, at its sole cost and expense, all facilities constructed or installed on the CAP System right-of-way under this Contract and restore said right-of-way and all Project facilities affected to their condition immediately prior to the construction or installation of such connection facilities. If the [Entity] fails to remove said facilities and restore said right-of-way and Project facilities within thirty (30) days after receiving any written notice from CAWCD to do so, CAWCD may remove said facilities and restore said right-of-way and Project facilities at the [Entity]'s cost and expense. Within thirty (30) days after receiving written demand from CAWCD to do so, the [Entity] shall pay CAWCD, as specified in such written demand, for all costs and expenses incurred by CAWCD in removing said facilities and restoring said right-of-way and Project facilities.

4.4 When making or considering modifications to the CAP System, CAWCD shall comply with the terms of Article 12 of the Operating Agreement. If modification of the CAP System is required to allow for the interconnection between the CAP System and the [Entity]'s facilities constructed on the

CAP System right-of-way, including construction of one or more additional CAP turnouts, CAWCD shall make such interconnection modifications at the sole expense of the Entity which shall advance fund CAWCD's costs.

4.5 All Wheeled Water shall be measured with equipment that complies with CAWCD and United States standards and shall be operated and maintained by CAWCD. Upon request of the Entity, the accuracy of such measurements shall be investigated by CAWCD and the Entity, and any errors which are mutually determined to have occurred shall be adjusted; Provided, however, if CAWCD and the Entity cannot agree on the required adjustment, CAWCD's determination shall be conclusive, subject to review and revision by the Secretary.

4.6 If the [Entity] intends to transport Wheeled Water through facilities on the CAP System right-of-way that are owned or operated by entities other than the United States or CAWCD, the use by the [Entity] of such facilities shall be the subject of written agreement(s) between the [Entity] and the owner(s) or operator(s) of such facilities.

4.7 Neither the United States nor CAWCD shall be responsible for the control, carriage, handling, use, disposal, or distribution of water up to the Point(s) of Receipt or beyond the Point(s) of Delivery. Except for such claims, costs or damages arising from acts of negligence and committed by the United States or its employees, agents, or contractors for which the United States is found liable under the Federal Tort Claims Act, the [Entity] shall indemnify and hold the United States and CAWCD 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 control, carriage, handling, use, disposal, or distribution of water up to the Point(s) of Receipt or beyond the Point(s) of Delivery.

5. PLACE OF USE:

Wheeled Water shall be used within the Place of Use.

6. INTERRUPTIONS AND REDUCTIONS

The United States and/or CAWCD may discontinue or reduce the quantity of Wheeled Water to be transported as herein provided for the purposes of investigation, inspection, construction, testing, maintenance, repair, or replacement of any of the Project facilities or any part thereof. CAWCD shall attempt to coordinate any such discontinuance or reduction with the [Entity] and give the [Entity] due notice in advance of such discontinuance or reduction. In case of emergency, no notice need be given. The United States, its officers, agents, and employees, and CAWCD, its officers, agents, and employees, shall not be liable for damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in transportation of Wheeled Water occurs. If any such discontinuance or temporary reduction results in transportation for the [Entity] of less water than what has been paid for in advance, the [Entity] shall be reimbursed or given credit for the appropriate proportion of Fixed OM&R Charges and Pumping Energy Charges prior to the date of the entities next payment.

7. WATER QUALITY

7.1 Neither the United States nor CAWCD warrants the quality of water transported through the CAP System to the [Entity] pursuant to this Contract and the United States and CAWCD are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any water transported through the CAP System. [Entity] assumes all responsibility for purifying or otherwise treating Wheeled Water received at the Point of Delivery to meet applicable water quality standards established by federal, state or local authorities. The [Entity] waives its rights to make a claim against the United States, CAWCD or any Long-Term Contractor or contractor for Excess Water service on account of the quality of Wheeled Water or any changes in water quality caused by the commingling of Wheeled Water with Project Water and/or Non-Project Water.

7.2 The [Entity] shall comply with and pay for all water quality monitoring, water quality reporting and water quality compliance and treatment requirements prescribed by CAWCD or the United States applicable to the transportation of Wheeled Water under this [Reclamation Wheeling Contract/Federal Arrangement], which requirements may be amended by CAWCD and/or the United States from time to time.

7.3 The [Entity] shall comply with all applicable state and federal laws, rules, and regulations governing the transportation of Wheeled Water under this Contract. All references in this Contract to laws, rules and regulations include all amendments and successor laws, rules, and regulations to such laws, rules and regulations

7.4 Nothing in this Contract shall be construed to require CAWCD to receive or transport Wheeled Water if such water fails to meet water quality standards established by CAWCD and the United States under Subsection 12.1 of the CAP System Use Agreement, which water quality standards may be amended by CAWCD and the United States from time to time. Further, nothing in this [Reclamation Wheeling Contract/Federal Arrangement] shall be construed so as to require that CAWCD receive or transport Wheeled Water from any source when such receipt or transportation is likely to result in a violation of then existing federal and state laws or regulations regarding water quality. CAWCD shall have the right, without liability of any kind, to refuse to transport Wheeled Water if such water fails to meet water quality standards established by CAWCD and the United States and/or if such transportation is likely to result in a violation of then existing federal and state laws or regulations regarding water quality.

7.5 The [Entity] shall indemnify and hold harmless CAWCD and the United States from and against any and all claims, damages, costs and other liabilities resulting from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System, whether or not asserted by a third party, and, at CAWCD's election, defend CAWCD against any such losses, claims, damages or other liabilities asserted by a third party.

7.6 CAWCD shall cooperate fully with the [Entity] in the defense of any and all claims, damages, costs and other liabilities asserted by a third party under this Section 7 and shall provide the [Entity] with all information and records necessary for the [Entity] to defend against such claims, damages, costs and other liabilities.

7.7 The [Entity]'s obligation to indemnify under this Section 7 shall encompass only:

7.7.1 The payment of claims, damages, costs and other liabilities that have been determined by mutual agreement of the [Entity] and CAWCD, and, if applicable, the United States, or by arbitration or a court to have resulted from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System.

7.7.2 All costs incurred by CAWCD in defending against any and all claims, damages, costs and other liabilities asserted by a third party resulting from water quality degradation due to the [Entity's] introduction of Wheeled Water into the CAP System and all costs incurred by CAWCD in cooperating with the [Entity] under Subsection 7.6 of this Contract.

8. LOSSES

Except for any volume of water transported under this Contract that is Firming Water, as that term is defined in the CAP System Use Agreement, the [Entity] shall be assessed uniform losses of five percent (5%) against all Wheeled Water transported through the CAP System under this Contract such that the amount of Wheeled Water delivered at Point(s) of Delivery under this Contract will be five percent (5%) less than the amount of Wheeled Water entering the CAP System at the Point(s) of Receipt. Water transported under this Contract that is Firming Water shall bear no losses.

9. PROCEDURE FOR SCHEDULING WATER

9.1 On or before October 1 of each Year, the [Entity] shall submit in writing to CAWCD a Water Delivery Schedule indicating the amounts of Wheeled Water the [Entity] desires to be transported from the Point(s) of Receipt to the Point(s) of Delivery during each month of the following Year, taking into account applicable losses.

9.2 Each year, after receipt of [Entity's] Water Delivery Schedule, CAWCD shall review it together with all other Water Delivery Schedules, and shall make such adjustments to the Entity's Water Delivery Schedule as are necessary to accommodate the CAP System physical and operational constraints and scheduling priorities identified in Subsection 10.2.1 and Section 11 of the CAP System Use Agreement, respectively.

9.3 On or before December 15 of each Year, CAWCD shall provide the [Entity] with a copy of the final Water Delivery Schedule for the following Year, which shall show the amount of Wheeled Water to be transported from the Point(s) of Receipt to the Point(s) of Delivery during each month of that Year and shall reflect applicable losses.

9.4 The monthly Water Delivery Schedule may be amended upon the [Entity]'s written request to CAWCD. Proposed amendments shall be submitted by the [Entity] to CAWCD no later than fifteen (15) days before the desired change is to become effective. CAWCD may modify proposed amendments to the [Entity's] monthly Water Delivery Schedule as necessary to conform to previously approved Water Delivery Schedules. CAWCD shall notify the [Entity] of its action on the Entity's requested schedule modification within ten (10) days of CAWCD's receipt of such request.

9.5 The [Entity] shall indemnify and hold CAWCD, its officers, agents and employees, and the United States, its officers, agents and employees, harmless from all damages and any claims of damage of any nature whatsoever arising out of or connected with the actions of CAWCD regarding water transportation schedules furnished by or to the [Entity].

10. CHARGES

10.1 Annual Charges:

10.1.1 Fixed OM&R Charge: The [Entity] shall pay in advance the same Fixed OM&R Charge established annually by CAWCD for the delivery of Project Water in the CAP System. On or before the date of execution of this Contract, or as soon thereafter as is practicable, CAWCD shall notify the [Entity] of the Fixed OM&R Charge for the initial Year of water transportation ("initial Year"). Within a reasonable time of receipt of such notice, but prior to the transportation of Wheeled Water, the [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of the initial Year, the Fixed OM&R Charge due for transportation of Wheeled Water scheduled for transportation in the initial Year. For each subsequent Year, CAWCD will establish the Fixed OM&R Charge and shall notify the [Entity] of the Fixed OM&R Charge for such subsequent Year on or before

December 15 preceding each subsequent Year. The [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of said subsequent Year, the Fixed OM&R Charge due for transportation of Wheeled Water scheduled for transportation in said subsequent Year.

10.1.2 Pumping Energy Charge: The [Entity] shall pay in advance the same Pumping Energy Charge established annually by CAWCD for the delivery of Project Water in the CAP System. On or before the date of execution of this Contract, or as soon thereafter as is practicable, CAWCD shall notify the [Entity] of the Pumping Energy Charge for the initial Year of water transportation. Within a reasonable time of receipt of such notice, but prior to the transportation of Wheeled Water, the [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of the initial Year, the Pumping Energy Charge due for transportation of Wheeled Water scheduled for transportation in the initial Year. For each subsequent Year, CAWCD will establish the Pumping Energy Charge and shall notify the [Entity] of the Pumping Energy Charge for such subsequent Year on or before December 15 preceding each subsequent Year. The [Entity] shall advance to CAWCD, in monthly installments payable on or before the first day of each month of said subsequent Year the Pumping Energy Charge due for transportation of Wheeled Water scheduled for transportation in said subsequent Year. The [Entity] shall receive credit for the Pumping Energy Charges associated with any Wheeled Water scheduled for transportation that is not transported through the CAP System to the Point(s) of Delivery.

10.1.3 Capital Equivalency Charge: In addition to the Fixed OM&R Charges and the Pumping Energy Charges required in Subsections 10.1.1 and 10.1.2 of this Contract, each Year the [Entity] shall make payment to CAWCD in equal semiannual installments of a Capital Equivalency Charge. Until fulfillment of CAWCD's repayment obligation the amount of this charge in any Year shall be equal to the M&I water service capital charge, as published in CAWCD's annual rate schedule for that Year, multiplied by the maximum number of acre-feet per year of Wheeled Water that may be transported through the CAP System under this Contract, regardless of the amount to be transported in any given Year, except that the amount of the Capital Equivalency Charge will be reduced for each acre-foot of Wheeled Water that the [Entity] schedules to be delivered for Firming in that Year. CAWCD and the United States will coordinate and consult regarding any appropriate charge for transportation of Wheeled Water following fulfillment of CAWCD's repayment obligation in addition to the charges set forth under Subsections 10.1.1 and 10.1.2. The Capital Equivalency Charge payment for the initial Year shall be advanced to CAWCD in equal semiannual installments on or before December 1 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent Year, payments by the [Entity] in accordance with the foregoing provisions shall be made in equal semiannual installments on or before the

December 1 preceding said subsequent Year and the June 1 of said subsequent Year as may be specified by CAWCD in written notices to the [Entity]. CAWCD shall deposit the Capital Equivalency Charge revenues to the Lower Colorado River Basin Development Fund.

10.2 The payment of all water transportation charges when due as stipulated in Subsections 10.1.1, 10.1.2, and 10.1.3 of this Contract is a condition precedent to the transportation of Wheeled Water through the CAP System.

10.3 The obligation of the [Entity] to pay CAWCD as provided in this Contract is a general obligation of the [Entity] notwithstanding the manner in which the obligation may be distributed among the [Entity]'s water users and notwithstanding the default of individual water users in their obligations to the [Entity].

11. CHARGES FOR DELINQUENT PAYMENTS AND REMEDIES FOR FAILURE TO PAY:

11.1 The Entity shall be subject to interest, administrative and penalty charges on delinquent installments or payments. The [Entity] shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the [Entity] shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the [Entity] shall pay an additional penalty charge of six percent (6%) per year for each day the payment is delinquent beyond the due date. Further, the Entity shall pay any fees incurred for debt collection services associated with a delinquent payment.

11.2 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 one-half percent (0.5%) per month. The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

12. SCHEDULING PRIORITIES:

The scheduling and delivery of Wheeled Water pursuant to this Contract shall be subject to the CAP System Use Scheduling Priorities as set forth in the CAP System Use Agreement.