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JUL 28 2011



Chandler • Arizona
Where Values Make The Difference

MEMORANDUM

Municipal Utilities Department Memo ER12-001

DATE: JULY 28, 2011

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RDL*
DAVE SIEGEL, MUNICIPAL UTILITIES DIRECTOR *DS*

FROM: GREGG CAPPS, WATER RESOURCE MANAGER *GWC*

SUBJECT: Resolution No. 4524 authorizing two separate Agreements between Central Arizona Water Conservation District (CAWCD) and the City of Chandler for storage of Central Arizona Project (CAP) water at the Superstition Mountains and Tonopah Desert Recharge Projects

RECOMMENDATION: Staff recommends Council pass and adopt Resolution No. 4524 authorizing two separate Agreements between Central Arizona Water Conservation District and the City of Chandler for storage of Central Arizona Project water at the Superstition Mountains and Tonopah Desert Recharge Projects.

BACKGROUND/DISCUSSION: The Arizona State Legislature passed the 1980 Groundwater Management Act (GMA) to reverse the trend of declining groundwater levels. The GMA regulates the use of groundwater to maintain a balance between groundwater withdrawal and natural and artificial recharge of the aquifer. This balance is referred to as "Safe Yield". The GMA also requires cities to demonstrate they have an assured water supply (renewable water resource) for any proposed new development. Chandler recharges a portion of its surface water into recharge facilities to maintain its safe yield and designation of assured water supply. The City then uses its wells to recover this water as authorized under the Act. Chandler currently has active agreements to recharge water into the Granite Reef and New River Agua Fria Underground Storage Projects.

Entering into agreements to store Colorado River water at CAWCD's Superstition Mountain and Tonopah Desert Recharge Projects will provide alternative sites for water storage when needed. CAWCD customers must obtain a Water Storage Agreement with CAWCD before water can be stored in a permitted recharge facility. Once this Agreement is approved, Chandler can order CAP water for recharge as needed. Chandler will not be charged for the use of these facilities unless recharge takes place. When water is recharged, Chandler must pay the annual cost of the water (\$122 per acre foot in 2011) and the annual operation and maintenance costs associated with the recharge facility (\$8.00 per acre foot in 2011). Chandler budgets for these

expenses each year in the annual water operating budget. The amount of CAP water purchased for recharge at CAWCD recharge facilities is at the sole discretion of the City of Chandler.

FINANCIAL IMPLICATIONS: There are no financial implications associated with the approval of these Agreements.

PROPOSED MOTION: Move to pass and adopt Resolution No. 4524, authorizing two separate Agreements between Central Arizona Water Conservation District and the City of Chandler for storage of Central Arizona Project water at the Superstition Mountain and Tonopah Desert Recharge Projects.

Attachments: Resolution No. 4524

Agreement for Storage of Water at the Superstition Mountain Recharge Project

Agreement for Storage of Water at the Tonopah Desert Recharge Project

RESOLUTION NO. 4524

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, AUTHORIZING TWO SEPARATE AGREEMENTS FOR STORAGE OF WATER BETWEEN CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD) AND THE CITY OF CHANDLER FOR STORAGE OF CENTRAL ARIZONA PROJECT (CAP) WATER AT THE TONOPAH DESERT, AND SUPERSTITION MOUNTAIN RECHARGE PROJECTS

WHEREAS, in order to comply with the requirements of the Groundwater Management Act (GMA), the City of Chandler recharges a portion of its surface water into recharge facilities; and

WHEREAS, recharging surface water will help the City to meet the GMA requirements for an assured water supply; and

WHEREAS, the City needs alternative recharge sites and additional recharge capacity to supplement its existing recharge sites and capacity; and

WHEREAS, CAWCD is willing to enter water storage agreements that will allow the City to store water at two different storage sites owned and managed by CAWCD: the Tonopah Desert, and Superstition Mountain Recharge Projects;

WHEREAS, entering these two agreements is in the best interests of the City of Chandler.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Maricopa County, Arizona, as follows:

Section 1. That the City hereby approves *Agreement for Storage of Water at the Tonopah Desert Recharge Project Between Central Arizona Water Conservation District and the City of Chandler*, and authorizes the Mayor to execute that Agreement.

Section 2. That the City hereby approves *Agreement for Storage of Water at the Superstition Mountain Recharge Project Between Central Arizona Water Conservation District and the City of Chandler* and authorizes the Mayor to execute that Agreement.

Section 3. That the various City officers and employees are hereby authorized and directed to perform all acts necessary to give effect to this Resolution.

APPROVED, PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this 28th day of July, 2011.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4524 was duly passed and adopted by the City Council of the City of Chandler, Arizona at a regular meeting held on the _____ day of _____, 2011, and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CH for

**AGREEMENT FOR STORAGE OF WATER
AT THE
SUPERSTITION MOUNTAINS RECHARGE PROJECT**

1. PARTIES:

This Agreement is made and entered into the _____ day of _____, 2011, by and between the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as "CAWCD", and CITY OF CHANDLER hereinafter referred to as "Chandler".

2. RECITALS:

2.1 CAWCD has constructed and is responsible for operating the Superstition Mountains Recharge Project (the "SMRP"), an underground storage facility that is located in the East Salt River Valley Sub-basin of the Phoenix Active Management Area in eastern Maricopa County.

2.2 ADWR has issued CAWCD a Constructed Underground Storage Facility Permit (Permit No. 73-207702.0001) for the SMRP. The permit authorizes the underground storage of a maximum of 25,000 acre-feet per annum for Phase 1, and 56,500 acre-feet per annum for Phase 2, at the SMRP. The SMRP is a State Demonstration Recharge Project pursuant to A.R.S. § 45-891.01, et seq.

2.3 Chandler desires to store CAP water at the SMRP and CAWCD agrees to make available unused storage capacity at the SMRP for such storage, in accordance with the provisions of this Agreement.

NOW THEREFORE, in consideration of the foregoing, the payments to be paid by Chandler, and the covenants and agreements contained in this Agreement, and other good and valuable consideration, CAWCD and Chandler agree as follows:

3. DEFINITIONS:

As used in this Agreement, the following terms, when capitalized, have the following meanings:

3.1 ADWR: The Arizona Department of Water Resources

3.2 CENTRAL ARIZONA PROJECT (CAP): The water delivery works of the CAP including, but not limited to, the CAP canal, its turnout structures and associated measuring devices.

- 3.3 SMRP: The constructed underground storage facility constructed and operated by CAWCD pursuant to the Permit, which is located in portions of Sections SE ¼ of Sec. 23, SW ¼ of Sec. 24, NW ¼ of Sec. 25, NE ¼ of Sec. 26, T2S, R8E, GSRB&M, Maricopa County, Arizona.
- 3.4 SMRP TURNOUT STRUCTURE: The point at which Chandler Water is diverted from the CAP canal for delivery into the SMRP.
- 3.5 CHANDLER WATER: CAP water scheduled by Chandler under the terms of its Excess Water Contract and/or CAP Water Service Subcontract.
- 3.6 PARTY/PARTIES: Either one or both of the parties to this Agreement.
- 3.7 PERMIT: The Constructed Underground Storage Facility Permit issued by the ADWR for the SMRP, Permit No. 71-207702.0001.

4. SCOPE:

This Agreement is limited to the diversion of water at the SMRP Turnout Structure, and the storage of such water at the SMRP by CAWCD for the benefit of Chandler. CAWCD shall deliver Chandler Water, which is scheduled by Chandler for storage at the SMRP in accordance with this Agreement, and CAWCD shall store such water underground at the SMRP for the benefit of Chandler.

5. TERM OF AGREEMENT:

This Agreement shall become effective when executed by both Parties and shall remain in effect for ten (10) years unless the Parties agree in writing to extend the term or unless it is sooner terminated or canceled in accordance with the terms of this Agreement.

6. CONDITIONS RELATING TO STORAGE:

- 6.1 All storage of Chandler Water at the SMRP shall be consistent with Arizona law.
- 6.2 Chandler shall obtain a water storage permit from ADWR authorizing it to store Chandler Water at the Constructed SMRP.
- 6.3 CAWCD's storage of Chandler Water at the SMRP shall, at all times, comply with the Permits. CAWCD shall be responsible for filing annual reports as required by the Permit. CAWCD shall promptly notify Chandler of any changes or modifications to the Permit that would affect Chandler's rights under this Agreement. If the Permit is canceled or expires for any reason, Chandler may terminate this Agreement.

7. PROCEDURE FOR SCHEDULING STORAGE CAPACITY:

7.1 As soon as practicable after the date of execution of this Agreement, Chandler shall submit to CAWCD a proposed schedule indicating the amount of SMRP storage capacity it desires to use during the year in which this Agreement is executed. Thereafter, on or before October 1 of each year during the term of this Agreement, Chandler shall submit to CAWCD a proposed schedule indicating the amount of SMRP storage capacity Chandler desires to use during the following year.

7.2 As soon as practicable after receipt of Chandler's proposed schedule following the execution of this Agreement, CAWCD shall return to Chandler the schedule, as adjusted by and acceptable to CAWCD, indicating the amount of SMRP storage capacity that is available to Chandler for the year in which this Agreement is executed. Thereafter, on or before November 15 of each year during the term of this Agreement, CAWCD shall return to Chandler the schedule, as adjusted by and acceptable to CAWCD, indicating the amount of SMRP storage capacity that is available to Chandler for the following year.

8. WATER STORAGE RATE:

Each year under the term of this Agreement, CAWCD shall establish a per acre-foot recharge rate ("Annual Recharge Rate") for the use of SMRP storage capacity for the following year, in accordance with CAWCD's adopted Recharge Rate Policy. Chandler shall be obligated to pay CAWCD this Annual Recharge Rate for each acre-foot of storage capacity used by Chandler during the year. Such payment shall be in accordance with the provisions of Section 13 below.

9. OPERATING AGENT:

9.1 CAWCD shall be responsible for operating the SMRP.

9.2 CAWCD shall retain sole responsibility and authority for decisions relating to the SMRP operating and maintenance practices, including maintenance scheduling and the selection of periods when maintenance will be done.

9.3 Whenever practicable, CAWCD shall inform Chandler ninety (90) days in advance of any matter which may substantially affect the SMRP or the rights of Chandler.

10. DESTRUCTION/RECONSTRUCTION OF THE SMRP:

In the event of destruction of all or part of the SMRP, CAWCD may repair or reconstruct the SMRP, but CAWCD shall not be obligated to do so.

11. WATER MEASUREMENT AND ACCOUNTING:

- 11.1 CAWCD shall base its accounting for water delivered to the SMRP on actual measurements, methods required by the Permit and/or generally accepted accounting and engineering practices.
- 11.2 CAWCD shall install and maintain a flow measurement system to measure the amount of water diverted from the CAP into the SMRP. CAWCD shall test and maintain the accuracy of this system within plus or minus 5 percent of actual flows.
- 11.3 CAWCD shall determine evaporation losses representative of the conditions at or near the SMRP using the method indicated in the Permits or using actual measurements, when available. Any other losses in the SMRP shall be calculated using generally accepted engineering practices.
- 11.4 All losses that occur at the SMRP, other than by evaporation, will be calculated using generally accepted engineering practices and water-level readings from the gages in the basins.
- 11.5 CAWCD shall prepare a monthly water accounting report of water stored at the SMRP for Chandler. The report shall include the daily amount of water stored and the losses calculated as described in this Section.
- 11.6 CAWCD shall provide the ADWR with water accounting reports for the SMRP as required by the Permit.
- 11.7 The water accounting reports prepared pursuant to this Section shall be sent to Chandler monthly and shall be retained by CAWCD for at least three years.
- 11.8 CAWCD shall provide Chandler copies of SMRP annual reports submitted to ADWR.

12. WATER QUALITY:

Chandler shall indemnify and hold harmless CAWCD against all losses to third parties resulting from water quality degradation or harm to property caused by Chandler's use of the SMRP, due to the commingling of Chandler Water with the groundwater. Further, Chandler waives any claim on its own behalf against CAWCD for water quality degradation or harm to property arising from such commingling, unless such claim is intended to enforce the indemnification provision of this Section; provided, however, that Chandler shall indemnify and hold harmless CAWCD only to the extent that indemnification is not provided to CAWCD by the State of Arizona pursuant to A.R.S. § 45-898.01; and provided, further, however, that Chandler's indemnification shall only extend to the

percentage of degradation attributable to the water stored on behalf of Chandler at the SMRP under the terms of this Agreement. Chandler retains the right to claim over against any other entity, including CAWCD, storing water in the SMRP in the amount proportionate to such amount stored by those other entities. In no event shall CAWCD assume liability for water quality degradation resulting from the storage of water in the SMRP, solely due to its performance of obligations as the operating agent under this Agreement.

13. BILLING AND PAYMENTS:

13.1 On or before the 15th day of each month, CAWCD will bill Chandler for each acre-foot of storage capacity used by Chandler during the previous month. The amount billed to Chandler shall be equal to the Annual Recharge Rate multiplied by the number of acre-feet of Chandler Water delivered to the SMRP as measured at the SMRP Turnout Structure. Chandler shall pay CAWCD within thirty (30) days of receipt of such bill. Payment is not contingent upon and is not related to Chandler accrual of long-term storage credits from water stored at the SMRP.

13.2 If payment due under this Agreement remains unpaid more than sixty (60) days after its due date, CAWCD may terminate this Agreement effective upon written notice to Chandler. In the event CAWCD terminates this Agreement, Chandler shall remain obligated to pay any outstanding balance.

14. AUTHORIZATIONS AND APPROVALS:

Chandler shall be responsible for obtaining, at its own expense, any permits, authorizations and approvals required for the underground storage and recovery of water in the SMRP or for Chandler's performance under this Agreement. Chandler shall keep CAWCD informed of its applications for such permits and authorizations. CAWCD will share information with Chandler to assist Chandler in its permit application. Chandler shall also be responsible for filing any annual reports or other documents necessary to maintain its right to store water at the SMRP.

15. LIABILITY:

15.1 Each Party shall assume liability for its own negligence and shall indemnify the other against any damages the non-negligent Party incurs as a result of the negligent Party's action or inaction.

- 15.2 CAWCD shall assume no liability to Chandler for claims of damage resulting from CAWCD's decision to curtail or stop water flows to the SMRP site during storm or emergency conditions.
- 15.3 CAWCD shall assume no liability to Chandler for quantities of recoverable or unrecoverable water stored underground or removed from underground storage; nor to replace water lost, unintentionally misdirected or otherwise failing to reach the underlying aquifer. CAWCD, Chandler and any other entities storing water at the SMRP shall share in any deficiency resulting from such lost, misdirected or otherwise unstored water in proportion to the amount of the SMRP capacity it used at the time the deficiency accrued.
- 15.4 Liability, as described in Section 12 related to water stored in the SMRP by Chandler prior to termination of this Agreement, shall remain with Chandler after termination of this Agreement. This Section 15.4 shall survive expiration or termination of this Agreement, and remain in full force and effect.
- 15.5 In the event any third party institutes an action against CAWCD, Chandler or other entities storing water at the SMRP for claims arising from the activities undertaken pursuant to this Agreement, the parties named in the action shall meet to determine the procurement of legal counsel and the steps to take to defend against the action.

16. INSURANCE

- 16.1 During the term of this Agreement, unless otherwise agreed in writing by CAWCD, Chandler shall procure and maintain in force or cause to be procured and maintained in force the following types of insurance:
 - 16.1.1 Commercial General Liability Insurance naming CAWCD as an additional insured, including bodily injury, personal injury, property damage, wrongful death and contractual liability with a minimum limit of \$1,000,000 per occurrence.
 - 16.1.2 Business Automobile Liability Insurance with a minimum limit of \$1,000,000.
 - 16.1.3 Worker's Compensation required by Arizona State law, and Employer's Liability Insurance with limits of \$1,000,000 per accident, \$1,000,000 per employee per disease, and \$1,000,000 aggregate for disease.
 - 16.1.4 Commercial Umbrella – combined single limit of \$4,000,000.

- 16.2 Any insurance carried by CAWCD shall be excess and not contributory insurance to any insurance afforded hereunder. Chandler shall submit satisfactory proof of insurance to CAWCD prior to use of the SMRP. Such proof of insurance shall be in the form of a certificate stating the coverage provided and that such insurance shall not be canceled until after thirty (30) days prior written notice thereof shall have been given to CAWCD.
- 16.3 With written approval of CAWCD, Chandler may self-insure or combine the coverages required by this Agreement with coverages outside the scope of that required by this Agreement.
- 16.4 If Chandler fails to acquire, provide or continue the insurance coverages required CAWCD may terminate this Agreement immediately upon written notice to Chandler.

17. DEFAULT:

- 17.1 Chandler and CAWCD shall pay all monies and carry out all other performances, duties and obligations agreed to be paid and/or performed by them pursuant to this Agreement. A failure by Chandler or CAWCD to adhere to the covenants and obligations to be kept and performed by it shall be an act of default under this Agreement.
- 17.2 In the event of a default by Chandler or CAWCD, then, within thirty (30) days following notice of such default either Party may cure the default either by advancing the necessary funds and/or rendering the necessary performance. Such notice shall specify the existence and nature of such default. If such default is not remedied within the time specified, the non-defaulting Party may terminate this Agreement upon 24 hours written notice.

18. UNCONTROLLABLE FORCES:

Neither Party to this Agreement shall be considered in default in the performance of any of its obligations under this Agreement (other than obligations of Chandler to pay costs and expenses) when a failure of performance is 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 non-action by, or failure to obtain the necessary authorizations or

approvals from any governmental agency or authority not a Party to this Agreement, which by exercise of due diligence, it shall be unable to overcome.

19. RESOLUTION OF DISPUTES:

A Party having a dispute under this Agreement that cannot be resolved by the Parties, may submit the dispute to arbitration. Arbitration shall be subject to the following provisions:

- 19.1.1 Arbitration shall be binding only upon the consent of the Parties.
- 19.1.2 A Party wishing to submit a dispute to arbitration shall provide thirty (30) days written notice to the other Party of its intent to pursue arbitration and shall name one arbitrator at that time. Within fifteen (15) days of receiving this notice, the other Party to the dispute shall name one arbitrator and give written notice to the other Party of its selection. The two selected arbitrators shall, within five (5) days of selection of the second arbitrator, jointly select a third arbitrator.
- 19.1.3 Within thirty (30) days from the selection of the third arbitrator, the arbitrators shall hold a hearing. Within thirty (30) days from the conclusion of the hearing, the arbitrators shall render a decision on the dispute.
- 19.1.4 Arbitration shall be subject to the Arizona Arbitration Act, Arizona Revised Statutes, Title 12, Chapter 9, Article 1. In the event of a conflict between this Agreement and the Act, the provisions of this Agreement shall prevail.
- 19.1.5 A Party that is dissatisfied with the results of non-binding arbitration may pursue any other legal or equitable remedy not expressly provided for in this Section 19 and available to resolve the dispute.

20. ACTION PENDING RESOLUTION OF DISPUTES:

Pending the resolution of a dispute pursuant to Section 19, each Party shall proceed, to the extent legally permissible, in a manner consistent with this Agreement, and shall make payments required in accordance with the applicable provisions of this Agreement. Any amount paid by a Party pursuant to this Section 20 during the course of such dispute shall be subject to refund and adjustment upon a final resolution of any dispute involving an amount due.

21. GOVERNING LAW:

The laws of the State of Arizona shall govern this Agreement.

22. BINDING OBLIGATIONS:

All of the obligations set forth in this Agreement shall bind CAWCD and its successors and assigns. This Agreement shall not be assigned by Chandler or accrue to Chandler successor, nor shall the SMRP capacity use rights hereunder of Chandler be used by another party. CAWCD retains the right to sell, lease, assign or otherwise convey its ownership of the SMRP to a third party. In such event, CAWCD may cancel this Agreement upon written notice to Chandler.

23. NOTICES:

23.1 Notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Central Arizona Water Conservation District
c/o General Manager
P.O. Box 43020
Phoenix, AZ 85080-3020

City of Chandler
c/o City Manager
P.O. Box 4008 MS605
Chandler, Arizona 85244-4008

23.2 A party may, at any time, by notice to the other Party, designate different or additional persons or different addresses for the giving of notices.

24. THIRD PARTY BENEFICIARIES:

This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

25. WAIVER:

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 or any subsequent breach of the same or any other term, covenant or condition of this Agreement.

26. HEADINGS:

Title and paragraph headings are for reference only and are not part of this Agreement.

27. ENTIRE AGREEMENT:

The terms, covenants and conditions of this Agreement constitute the entire Agreement between the Parties relative to the leasing of SMRP storage capacity, and no understandings or agreements not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the Parties.

28. CONFLICT OF INTEREST:

This Contract is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflict of interest.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto.

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Pamela Pickard, President

Attest: _____
Secretary

CITY OF CHANDLER

By: _____

Its: _____

P:\sb\Water Storage Agreement\SMRP \Chandler
221.01

APPROVED AS TO FORM

~~_____~~ *CH for*
CITY ATTORNEY

**AGREEMENT FOR STORAGE OF WATER
AT THE
TONOPAH DESERT RECHARGE PROJECT**

1. PARTIES:

This Agreement is made and entered into the _____ day of _____, 2011, by and between the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as "CAWCD", and CITY OF CHANDLER, hereinafter referred to as "Chandler".

2. RECITALS:

2.1 CAWCD has constructed and is responsible for operating the Tonopah Desert Recharge Project (the "TDRP"), an underground storage facility that is located in the Hassayampa Sub-basin of the Phoenix Active Management Area in western Maricopa County.

2.2 ADWR has issued CAWCD a Constructed Underground Storage Facility Permit (Permit No. 71-593305) for the TDRP. The permit authorizes the underground storage of a maximum of 150,000 acre-feet of water for the first four years and 87,500 acre-feet per year for the next 16 years at the TDRP. The TDRP is a State Demonstration Recharge Project pursuant to A.R.S. § 45-891.01, et seq.

2.3 Chandler desires to store CAP water at the TDRP and CAWCD agrees to make available unused storage capacity at the TDRP for such storage, in accordance with the provisions of this Agreement.

NOW THEREFORE, in consideration of the foregoing, the payments to be paid by Chandler, and the covenants and agreements contained in this Agreement, and other good and valuable consideration, CAWCD and Chandler agree as follows:

3. DEFINITIONS:

As used in this Agreement, the following terms, when capitalized, have the following meanings:

3.1 ADWR: The Arizona Department of Water Resources

3.2 CENTRAL ARIZONA PROJECT (CAP): The water delivery works of the CAP including, but not limited to, the CAP canal, its turnout structures and associated measuring devices.

- 3.3 TDRP: The constructed underground storage facility, constructed and operated by CAWCD pursuant to the Permit, which is located in portions of Sections NW ¼ of the NE ¼; SW ¼ of the NE ¼ and the W ½ of Section 33, T. 3N, R. 7W and the NW ¼ of Section 4, T. 2N, R. 7W, GSRB&M, Maricopa County, Arizona.
- 3.4 TDRP TURNOUT STRUCTURE: The point at which Chandler Water is diverted from the CAP canal for delivery into the TDRP.
- 3.5 CHANDLER WATER: CAP water scheduled by Chandler under the terms of its Excess Water Contract and/or CAP Water Service Subcontract.
- 3.6 PARTY/PARTIES: Either one or both of the parties to this Agreement.
- 3.7 PERMIT: The Constructed Underground Storage Facility Permit issued by the ADWR for the TDRP, Permit No. 71-593305.

4. SCOPE:

This Agreement is limited to the diversion of water at the TDRP Turnout Structure, and the storage of such water at the TDRP by CAWCD for the benefit of Chandler. CAWCD shall deliver Chandler Water, which is scheduled by Chandler for storage at the TDRP in accordance with this Agreement, and CAWCD shall store such water underground at the TDRP for the benefit of Chandler.

5. TERM OF AGREEMENT:

This Agreement shall become effective when executed by both Parties and shall remain in effect for ten (10) years unless the Parties agree in writing to extend the term or unless it is sooner terminated or canceled in accordance with the terms of this Agreement.

6. CONDITIONS RELATING TO STORAGE:

- 6.1 All storage of Chandler Water at the TDRP shall be consistent with Arizona law.
- 6.2 Chandler shall obtain a water storage permit from ADWR authorizing it to store Chandler Water at the Constructed TDRP.
- 6.3 CAWCD's storage of Chandler Water at the TDRP shall, at all times, comply with the Permits. CAWCD shall be responsible for filing annual reports as required by the Permit. CAWCD shall promptly notify Chandler of any changes or modifications to the Permit that would affect Chandler rights under this Agreement. If the Permit is canceled or expires for any reason, Chandler may terminate this Agreement.

7. PROCEDURE FOR SCHEDULING STORAGE CAPACITY:

7.1 As soon as practicable after the date of execution of this Agreement, Chandler shall submit to CAWCD a proposed schedule indicating the amount of TDRP storage capacity it desires to use during the year in which this Agreement is executed. Thereafter, on or before October 1 of each year during the term of this Agreement, Chandler shall submit to CAWCD a proposed schedule indicating the amount of TDRP storage capacity Chandler desires to use during the following year.

7.2 As soon as practicable after receipt of Chandler proposed schedule following the execution of this Agreement, CAWCD shall return to Chandler the schedule, as adjusted by and acceptable to CAWCD, indicating the amount of TDRP storage capacity that is available to Chandler for the year in which this Agreement is executed. Thereafter, on or before November 15 of each year during the term of this Agreement, CAWCD shall return to Chandler the schedule, as adjusted by and acceptable to CAWCD, indicating the amount of TDRP storage capacity that is available to Chandler for the following year.

8. WATER STORAGE RATE:

Each year under the term of this Agreement, CAWCD shall establish a per acre-foot recharge rate ("Annual Recharge Rate") for the use of TDRP storage capacity for the following year, in accordance with CAWCD's adopted Recharge Rate Policy. Chandler shall be obligated to pay CAWCD this Annual Recharge Rate for each acre-foot of storage capacity used by Chandler during the year. Such payment shall be in accordance with the provisions of Section 13 below.

9. OPERATING AGENT:

9.1 CAWCD shall be responsible for operating the TDRP.

9.2 CAWCD shall retain sole responsibility and authority for decisions relating to the TDRP operating and maintenance practices, including maintenance scheduling and the selection of periods when maintenance will be done.

9.3 Whenever practicable, CAWCD shall inform Chandler ninety (90) days in advance of any matter which may substantially affect the TDRP or the rights of Chandler.

10. DESTRUCTION/RECONSTRUCTION OF THE TDRP:

In the event of destruction of all or part of the TDRP, CAWCD may repair or reconstruct the TDRP, but CAWCD shall not be obligated to do so.

11. WATER MEASUREMENT AND ACCOUNTING:

- 11.1 CAWCD shall base its accounting for water delivered to the TDRP on actual measurements, methods required by the Permit and/or generally accepted accounting and engineering practices.
- 11.2 CAWCD shall install and maintain a flow measurement system to measure the amount of water diverted from the CAP into the TDRP. CAWCD shall test and maintain the accuracy of this system within plus or minus 5 percent of actual flows.
- 11.3 CAWCD shall determine evaporation losses representative of the conditions at or near the TDRP using the method indicated in the Permits or using actual measurements, when available. Any other losses in the TDRP shall be calculated using generally accepted engineering practices.
- 11.4 All losses that occur at the TDRP, other than by evaporation, will be calculated using generally accepted engineering practices and water-level readings from the gages in the basins.
- 11.5 CAWCD shall prepare a monthly water accounting report of water stored at the TDRP for Chandler. The report shall include the daily amount of water stored and the losses calculated as described in this Section.
- 11.6 CAWCD shall provide the ADWR with water accounting reports for the TDRP as required by the Permit.
- 11.7 The water accounting reports prepared pursuant to this Section shall be sent to Chandler monthly and shall be retained by CAWCD for at least three years.
- 11.8 CAWCD shall provide Chandler copies of TDRP annual reports submitted to ADWR.

12. WATER QUALITY:

Chandler shall indemnify and hold harmless CAWCD against all losses to third parties resulting from water quality degradation or harm to property caused by Chandler use of the TDRP, due to the commingling of Chandler Water with the groundwater. Further, Chandler waives any claim on its own behalf against CAWCD for water quality degradation or harm to property arising from such commingling, unless such claim is intended to enforce the indemnification provision of this Section; provided, however, that Chandler shall indemnify and hold harmless CAWCD only to the extent that indemnification is not provided to CAWCD by the State of Arizona pursuant to A.R.S. Section 45-898.01; and provided, further, however, that Chandler indemnification shall only extend to the

percentage of degradation attributable to the water stored on behalf of Chandler at the TDRP under the terms of this Agreement. Chandler retains the right to claim over against any other entity, including CAWCD, storing water in the TDRP in the amount proportionate to such amount stored by those other entities. In no event shall CAWCD assume liability for water quality degradation resulting from the storage of water in the TDRP, solely due to its performance of obligations as the operating agent under this Agreement.

13. BILLING AND PAYMENTS:

13.1 On or before the 15th day of each month, CAWCD will bill Chandler for each acre-foot of storage capacity used by Chandler during the previous month. The amount billed to Chandler shall be equal to the Annual Recharge Rate multiplied by the number of acre-feet of Chandler Water delivered to the TDRP as measured at the TDRP Turnout Structure. Chandler shall pay CAWCD within thirty (30) days of receipt of such bill. Payment is not contingent upon and is not related to Chandler accrual of long-term storage credits from water stored at the TDRP.

13.2 If payment due under this Agreement remains unpaid more than sixty (60) days after its due date, CAWCD may terminate this Agreement effective upon written notice to Chandler. In the event CAWCD terminates this Agreement, Chandler shall remain obligated to pay any outstanding balance.

14. AUTHORIZATIONS AND APPROVALS:

Chandler shall be responsible for obtaining, at its own expense, any permits, authorizations and approvals required for the underground storage and recovery of water in the TDRP or for Chandler performance under this Agreement. Chandler shall keep CAWCD informed of its applications for such permits and authorizations. CAWCD will share information with Chandler to assist Chandler in its permit application. Chandler shall also be responsible for filing any annual reports or other documents necessary to maintain its right to store water at the TDRP.

15. LIABILITY:

15.1 Each Party shall assume liability for its own negligence and shall indemnify the other against any damages the non-negligent Party incurs as a result of the negligent Party's action or inaction.

- 15.2 CAWCD shall assume no liability to Chandler for claims of damage resulting from CAWCD's decision to curtail or stop water flows to the TDRP site during storm or emergency conditions.
- 15.3 CAWCD shall assume no liability to Chandler for quantities of recoverable or unrecoverable water stored underground or removed from underground storage; nor to replace water lost, unintentionally misdirected or otherwise failing to reach the underlying aquifer. CAWCD, Chandler and any other entities storing water at the TDRP shall share in any deficiency resulting from such lost, misdirected or otherwise unstored water in proportion to the amount of the TDRP capacity it used at the time the deficiency accrued.
- 15.4 Liability, as described in Section 12 related to water stored in the TDRP by Chandler prior to termination of this Agreement, shall remain with Chandler after termination of this Agreement. This Section 15.4 shall survive expiration or termination of this Agreement, and remain in full force and effect.
- 15.5 In the event any third party institutes an action against CAWCD, Chandler or other entities storing water at the TDRP for claims arising from the activities undertaken pursuant to this Agreement, the parties named in the action shall meet to determine the procurement of legal counsel and the steps to take to defend against the action.

16. INSURANCE

- 16.1 During the term of this Agreement, unless otherwise agreed in writing by CAWCD, Chandler shall procure and maintain in force or cause to be procured and maintained in force the following types of insurance:
 - 16.1.1 Commercial General Liability Insurance naming CAWCD as an additional insured, including bodily injury, personal injury, property damage, wrongful death and contractual liability with a minimum limit of \$1,000,000 per occurrence.
 - 16.1.2 Business Automobile Liability Insurance with a minimum limit of \$1,000,000.
 - 16.1.3 Worker's Compensation required by Arizona State law, and Employer's Liability Insurance with limits of \$1,000,000 per accident, \$1,000,000 per employee per disease, and \$1,000,000 aggregate for disease.

- 16.1.4 Commercial Umbrella – combined single limit of \$4,000,000.
- 16.2 Any insurance carried by CAWCD shall be excess and not contributory insurance to any insurance afforded hereunder. Chandler shall submit satisfactory proof of insurance to CAWCD prior to use of the TDRP. Such proof of insurance shall be in the form of a certificate stating the coverage provided and that such insurance shall not be canceled until after thirty (30) days prior written notice thereof shall have been given to CAWCD.
- 16.3 With written approval of CAWCD, Chandler may self-insure or combine the coverages required by this Agreement with coverages outside the scope of that required by this Agreement.
- 16.4 If Chandler fails to acquire, provide or continue the insurance coverages required CAWCD may terminate this Agreement immediately upon written notice to Chandler.
- 17. DEFAULT:**
- 17.1 Chandler and CAWCD shall pay all monies and carry out all other performances, duties and obligations agreed to be paid and/or performed by them pursuant to this Agreement. A failure by Chandler or CAWCD to adhere to the covenants and obligations to be kept and performed by it shall be an act of default under this Agreement.
- 17.2 In the event of a default by Chandler or CAWCD, then, within thirty (30) days following notice of such default either Party may cure the default either by advancing the necessary funds and/or rendering the necessary performance. Such notice shall specify the existence and nature of such default. If such default is not remedied within the time specified, the non-defaulting Party may terminate this Agreement upon 24 hours written notice.
- 18. UNCONTROLLABLE FORCES:**
- Neither Party to this Agreement shall be considered in default in the performance of any of its obligations under this Agreement (other than obligations of Chandler to pay costs and expenses) when a failure of performance is 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 non-action by, or failure to obtain the necessary authorizations or approvals from any governmental agency or authority not a Party to this Agreement, which by exercise of due diligence, it shall be unable to overcome.

19. RESOLUTION OF DISPUTES:

A Party having a dispute under this Agreement that cannot be resolved by the Parties, may submit the dispute to arbitration. Arbitration shall be subject to the following provisions:

- 19.1.1 Arbitration shall be binding only upon the consent of the Parties.
- 19.1.2 A Party wishing to submit a dispute to arbitration shall provide thirty (30) days written notice to the other Party of its intent to pursue arbitration and shall name one arbitrator at that time. Within fifteen (15) days of receiving this notice, the other Party to the dispute shall name one arbitrator and give written notice to the other Party of its selection. The two selected arbitrators shall, within five (5) days of selection of the second arbitrator, jointly select a third arbitrator.
- 19.1.3 Within thirty (30) days from the selection of the third arbitrator, the arbitrators shall hold a hearing. Within thirty (30) days from the conclusion of the hearing, the arbitrators shall render a decision on the dispute.
- 19.1.4 Arbitration shall be subject to the Arizona Arbitration Act, Arizona Revised Statutes, Title 12, Chapter 9, Article 1. In the event of a conflict between this Agreement and the Act, the provisions of this Agreement shall prevail.
- 19.1.5 A Party that is dissatisfied with the results of non-binding arbitration may pursue any other legal or equitable remedy not expressly provided for in this Section 19 and available to resolve the dispute.

20. ACTION PENDING RESOLUTION OF DISPUTES:

Pending the resolution of a dispute pursuant to Section 19, each Party shall proceed, to the extent legally permissible, in a manner consistent with this Agreement, and shall make payments required in accordance with the applicable provisions of this Agreement. Any amount paid by a Party pursuant to this Section 20 during the course of such dispute shall be subject to refund and adjustment upon a final resolution of any dispute involving an amount due.

21. GOVERNING LAW:

The laws of the State of Arizona shall govern this Agreement.

22. BINDING OBLIGATIONS:

All of the obligations set forth in this Agreement shall bind CAWCD and its successors and assigns. This Agreement shall not be assigned by Chandler or accrue to Chandler successor, nor shall the TDRP capacity use rights hereunder of Chandler be used by another party. CAWCD retains the right to sell, lease, assign or otherwise convey its ownership of the TDRP to a third party. In such event, CAWCD may cancel this Agreement upon written notice to Chandler.

23. NOTICES:

23.1 Notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Central Arizona Water Conservation District
c/o General Manager
P.O. Box 43020
Phoenix, AZ 85080-3020

City of Chandler
c/o City Manager
P.O. Box 4008 MS605
Chandler, Arizona 85244-4008

23.2 A party may, at any time, by notice to the other Party, designate different or additional persons or different addresses for the giving of notices.

24. THIRD PARTY BENEFICIARIES:

This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

25. WAIVER:

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 or any subsequent breach of the same or any other term, covenant or condition of this Agreement.

26. HEADINGS:

Title and paragraph headings are for reference only and are not part of this Agreement.

27. ENTIRE AGREEMENT:

The terms, covenants and conditions of this Agreement constitute the entire Agreement between the Parties relative to the leasing of TDRP storage capacity, and no understandings or agreements not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the Parties.

28. CONFLICT OF INTEREST:

This Contract is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflict of interest.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto.

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Pamela Pickard, President

Attest: _____
Secretary

CITY OF CHANDLER

By: _____

Its: _____

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APPROVED AS TO FORM

CITY ATTORNEY *CH for*