



**Chandler • Arizona**  
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#11  
JAN 24 2013

**MEMORANDUM**

**DATE:** JANUARY 24, 2013

**TO:** MAYOR AND COUNCIL

**THRU:** MARY WADE, CITY ATTORNEY *MW*  
DAVE SIEGEL, MUNICIPAL UTILITIES DIRECTOR *DS*

**FROM:** CYNTHIA J. HAGLIN, ASSISTANT CITY ATTORNEY *CH*

**SUBJECT:** RESOLUTION NO. 4665 APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDED AND RESTATED WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION SETTLEMENT AGREEMENT, THE LEASE AGREEMENT AMONG THE CITY OF CHANDLER, THE WHITE MOUNTAIN APACHE TRIBE, AND THE UNITED STATES, AND WAIVER AND RELEASE OF CLAIMS

**RECOMMENDATION:** Recommend approval of Resolution No. 4665, which authorizes the Mayor on behalf of the City of Chandler to execute: 1) the *Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement* (“Agreement”); 2) *Lease Agreement among the City of Chandler, the White Mountain Apache Tribe, and the United States*; and 3) *Waiver and Release of Claims By Parties Other than WMAT on Behalf of Itself and Its Members and the United States Acting In Its Capacity As Trustee for the WMAT and Its Members*.

**BACKGROUND:** The United States, on behalf of the White Mountain Apache Tribe (“Tribe”) has asserted claims in the Gila River Adjudication for up to 180,000 acre-feet of water annually. These claims conflict with the water rights claims asserted by the City of Chandler, as well as water rights claims of Salt River Project and the Roosevelt Water Conservation District, which both provide a portion of Chandler’s water supplies.

After extensive negotiations, in 2009 the Tribe and the United States on behalf of the Tribe, reached an agreement with numerous parties to quantify the Tribe’s water rights and resolve potential future litigation as to its water rights entitlements (“2009 Agreement”). In addition to the Tribe and the United States, other parties include Salt River Project, Roosevelt Water Conservation District, the Cities of Chandler, Avondale, Glendale, Mesa, Peoria, Phoenix, Scottsdale, Showlow, Tempe and the Town of Gilbert, the Buckeye Irrigation Company, the Buckeye Water Conservation District, and the Central Arizona Water Conservation District.

On January 26, 2009, Senator Kyl introduced the White Mountain Apache Water Rights Settlement Act, which was to authorize and confirm the Tribe's Quantification Agreement and authorize funding for a key drinking water project required by the Tribe for its reservation. The 2009 Agreement was approved by Chandler City Council through its Resolution No. 4262 on February 26, 2009. However, the proposed federal 2009 Act was modified by the White Mountain Apache Tribe Water Rights Quantification Act of 2010 ("2010 Act"), which required that certain changes be made in the manner and timing of the federal funding set forth in the 2009 Act and 2009 Agreement. The parties have modified that earlier agreement so that it will comport with the 2010 Act. Now the parties, including Chandler, seek approval of this amended and restated agreement.

**DISCUSSION:** Through this settlement the Tribe will receive an annual water budget of approximately 52,000 acre-feet per year, comprising 27,000 acre-feet per year of surface water and groundwater supplies, and 25,000 acre-feet per year of Central Arizona Project ("CAP") water supplies. The Tribe will also receive federal funds to be used to construct a dam, treatment facilities and pipelines for its municipal water supply near Whiteriver and for certain other projects. In exchange, the Tribe will waive any other claims to water in the Gila River Adjudication that could have jeopardized the other parties' use of Gila River water supplies. Additionally, the Tribe has agreed to lease its CAP supplies for 100 years to several valley cities and the Central Arizona Water Conservation District. The annual quantity of water Chandler intends to lease from the Tribe offsets the Tribe's water use under the terms of the Agreement.

Chandler will lease: (1) 176 acre-feet of CAP water of M&I equivalent priority, (2) 1,085 acre-feet of CAP non-Indian Agricultural ("NIA") priority water that will be firmed to the equivalent of an M&I priority through December 31, 2107, and will be delivered as NIA priority water thereafter for the remainder of the lease; and (3) 3,336 acre-feet of CAP NIA priority water. In 2008 dollars, the one-time fee per acre-foot for the CAP M&I equivalent priority water is \$2,550 and the per-acre-foot fee for the non-Indian agricultural priority water is \$2,075. The leases will become effective after the Agreement becomes enforceable. The one-time fee for the water will be inflated from the 2008 price by the Consumer Price Index based on the date the lease becomes effective.

A copy of the Agreement and all its exhibits are available for review at the City Clerk's office.

**FINANCIAL IMPLICATIONS:**

Resolving the outstanding claims of the White Mountain Apache Tribe enables the City of Chandler to avoid future costs and uncertainty of litigation as to these water rights.

Chandler's cost to lease 1,261 acre-feet CAP M&I equivalent priority and 3,336 acre-feet of non-Indian CAP priority water (a total of 4,597 acre-feet) in 2008 dollars is \$10,137,750.00. The one-time fee for the water will be inflated from the 2008 price by the Consumer Price Index based on the date the lease becomes effective. The lease will become effective thirty days after the enforceability date of the Agreement. Staff anticipates that the Agreement will become

enforceable in mid-year 2014. Staff has estimated that if the lease payment occurs October 1, 2014, the lease payment will be \$11,750,000. Program funds for this expenditure are included in the current Capital Improvement Program.

**PROPOSED MOTION:** Move to approve Resolution No. 4665, approving and authorizing the Mayor to execute: 1) *Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement*; 2) *Lease Agreement among the City of Chandler, the White Mountain Apache Tribe and the United States*; and 3) *Waiver and Release of Claims by Parties other than the WMAT on Behalf of Itself and Its Members and the United States Acting In Its Capacity As Trustee for the WMAT and Its Members*.

RESOLUTION NO. 4665

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDED AND RESTATED WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION AGREEMENT, THE LEASE AGREEMENT AMONG THE CITY OF CHANDLER, THE WHITE MOUNTAIN APACHE TRIBE, AND THE UNITED STATES, AND WAIVER AND RELEASE OF CLAIMS.

WHEREAS, proceedings to determine the nature and extent of rights to the water of the White Mountain Apache Tribe and its Members, the United States and other claimants are pending in the General Adjudication of All Rights to Use Water in the Gila River System and Source in Maricopa County Superior Court (the “Gila River Adjudication”) and in the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source (the “Little Colorado River Adjudication”); and

WHEREAS, the City of Chandler is a claimant of water rights in the Gila River Adjudication wherein the White Mountain Apache Tribe has also asserted claims to substantial water rights; and

WHEREAS, recognizing that final resolution of these and other pending proceedings may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and seriously impair the long-term economic well-being of all Parties, the White Mountain Apache Tribe, the City of Chandler and others agreed to permanently quantify the water rights of the White Mountain Apache Tribe, its Members and the United States acting in its capacity as trustee for the White Mountain Apache Tribe and its Members as provided in that agreement and to seek funding, in accordance with applicable law, for the implementation of that agreement; and

WHEREAS, the Tribe, its Members, the United States, the City of Chandler (“City”) and other named parties agreed to permanently settle the Tribe’s claims to water in the Agreement entitled the *White Mountain Apache Tribe Water Rights Quantification Agreement among the United States of America; the State of Arizona; the White Mountain Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users’ Association; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona Cities of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria and Show Low; the Arizona Town of Gilbert; Buckeye Irrigation Company; Buckeye Water Conservation and Drainage District; and the Central Arizona Water Conservation District* (“2009 Quantification Agreement”); and

WHEREAS, subsequent to the approval of the *2009 Quantification Agreement* by the Chandler City Council through its Resolution No. 4262 on February 26, 2009, the United States Congress passed the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064 (2010) (the “2010 Act”); and

WHEREAS, due to changes in the manner and timing of the federal funding for the Tribe's programs set forth in the 2010 Act, the 2009 Quantification Agreement had to be amended to be consistent with the provisions of that 2010 Act; and

WHEREAS, the parties to the 2009 Quantification Agreement have therefore drafted and want to enter this Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement ("Amended and Restated Quantification Agreement"); and

WHEREAS, the best interests of the City will be served by approving and entering this Amended and Restated Quantification Agreement.

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

- Section 1. The City Council hereby approves this Amended and Restated Quantification Agreement which, with all Attachments, is on file at the City Clerk's Office.
- Section 2. The Mayor of the City of Chandler is hereby authorized to execute the *Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement among the United States of America; the State of Arizona; the White Mountain Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona Cities of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria and Show Low; the Arizona Town of Gilbert; Buckeye Irrigation Company; Buckeye Water Conservation and Drainage District; and the Central Arizona Water Conservation District.*
- Section 3. The Mayor is further authorized to execute the following documents in the form set forth in Exhibits to that Amended and Restated Quantification Agreement:
- a. *Lease Agreement for CAP Water Among the City of Chandler, the White Mountain Apache Tribe and the United States* in the form attached as Exhibit 10.1.1B to that Amended and Restated Quantification Agreement with any non-substantive revisions as shall be approved by the City Attorney.
  - b. *Waiver and Release of Claims for Injury to Water Rights by Parties other than the WMAT on behalf of Itself and Its Members and the United States Acting In Its Capacity as Trustee for the WMAT and Its Members* in the form attached as Exhibit 12.1 to that Amended and Restated Quantification Agreement.

Section 4. That the various City officers and employees be and they hereby are authorized and directed to perform all acts necessary to give effect to this Resolution.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this 24th day of January, 2013.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

*CH*

#### CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4665 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 24th day of January, 2013, and that a quorum was present thereat.

\_\_\_\_\_  
City Clerk

*Dated as of November 1, 2012*

**AMENDED AND RESTATED WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION AGREEMENT**

This Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement, dated as of November 1, 2012, amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009 in accordance with Section 309(d)(1)(A)(i) of the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010), and is entered into among the United States of America; the State of Arizona; the White Mountain Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona Cities of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria and Show Low; the Arizona town of Gilbert; Buckeye Irrigation Company; Buckeye Water Conservation and Drainage District; and the Central Arizona Water Conservation District.

**1.0 RECITALS**

**1.1** Proceedings to determine the nature and extent of the rights to water of the White Mountain Apache Tribe, its Members, the United States, and other claimants are pending in the Gila River Adjudication Proceedings and the Little Colorado River Adjudication Proceedings.

**1.2** Recognizing that final resolution of these pending proceedings may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and seriously impair the long-term economic well-being of all Parties, the White

*Dated as of November 1, 2012*

**AMENDED AND RESTATED  
WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS  
QUANTIFICATION AGREEMENT**

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Mountain Apache Tribe, its neighboring non-Indian communities and other Arizona water users have agreed to permanently quantify the water rights of the White Mountain Apache Tribe, its Members and the United States acting in its capacity as trustee for the White Mountain Apache Tribe and its Members as provided in this Agreement and to seek funding, in accordance with applicable law, for the implementation of this Agreement.

**1.3** In keeping with its trust responsibility to Indian Tribes and to promote tribal sovereignty and economic self-sufficiency, it is the policy of the United States to wherever possible quantify water rights claims of Indian Tribes without lengthy and costly litigation.

NOW, THEREFORE, the Parties agree as follows:

**2.0 DEFINITIONS**

For purposes of this Agreement, the following terms shall have the meanings set forth below:

**2.1** “Active Conservation Capacity” shall mean that portion of the capacity of a reservoir that may be used to Divert Water or operated to release Water for irrigation, power, M&I, or other Water Diversions.

**2.2** “Act” shall mean the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010), a copy of which is attached as Exhibit 2.2.

**2.3** “AFY” shall mean acre-feet per Year.

*Dated as of November 1, 2012*

**2.4** “Agreement” shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012, which amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009 in accordance with Section 309(d)(1)(A)(i) of the Act; and (2) any amendment or exhibit (including exhibit amendments) to the Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary.

**2.5** “Arizona Water Banking Authority” shall mean the Arizona Water Banking Authority, formed pursuant to A.R.S. §§45-2401 et seq.

**2.6** “Arizona Water Company” shall mean the Arizona corporation of that name, its subsidiaries and affiliates.

**2.7** “Available CAP Supply” shall mean for any given Year all Fourth Priority Water available for delivery through the CAP System, Water available from CAP dams and reservoirs other than Modified Roosevelt Dam, and return flows captured by the Secretary for CAP use.

**2.8** “AWSA” shall mean the Arizona Water Settlements Act, P.L. 108-451, 118 Stat. 3478 (2004).

**2.9** “Buckeye Irrigation Company” shall mean the corporation of that name organized under the laws of the Arizona Territory in 1907.

*Dated as of November 1, 2012*

**2.10** “Buckeye Water Conservation and Drainage District” shall mean the entity of that name that is a political subdivision of the State and an irrigation district with the power of drainage organized under the laws of the State.

**2.11** “CAP” or “Central Arizona Project” shall mean the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. §1521 et seq.).

**2.12** “CAP Contract” shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, for delivery of CAP Water.

**2.13** “CAP Contractor” shall mean an individual or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of water through the CAP System.

**2.14** “CAP Fixed OM&R Charge” shall mean ‘Fixed OM&R Charge’ as that term is defined in the CAP Repayment Stipulation.

**2.15** “CAP Indian Priority Water” shall mean that CAP Water having an Indian delivery priority under the CAP Repayment Contract.

**2.16** “CAP M&I Priority Water” shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.

**2.17** “CAP NIA Priority Water” shall mean that water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.

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**2.18** “CAP Operating Agency” shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. CAWCD is the CAP Operating Agency at the time of execution of this Agreement.

**2.19** “CAP Pumping Energy Charge” shall mean the ‘Pumping Energy Charge’ as that term is defined in the CAP Repayment Stipulation.

**2.20** “CAP Pumping Energy Costs” shall mean ‘Pumping Energy Costs’ as that term is defined in the CAP Repayment Stipulation.

**2.21** “CAP Repayment Contract” shall mean: (1) the contract between the United States and CAWCD for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

**2.22** “CAP Repayment Stipulation” shall mean 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.

**2.23** “CAP Subcontract” shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

**2.24** “CAP Subcontractor” shall mean an individual or entity that has entered into a long term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

**2.25** “CAP System” shall mean: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).

**2.26** “CAP Water” shall mean ‘Project Water’ as that term is defined in the CAP Repayment Stipulation.

**2.27** “CAWCD” or “Central Arizona Water Conservation District” shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

**2.28** “Cities” shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale and Tempe.

**2.29** “CSIF” shall mean the “CAP/SRP Interconnection Facility” that connects the Hayden-Rhodes Aqueduct of the CAP System to SRP’s Water delivery system.

**2.30** “Depletion” or “Deplete” shall mean the amount of Water Diverted less return flows to the Salt River or Little Colorado River Watershed from which it was Diverted.

**2.31** “Diversion” shall mean the act of Diverting.

**2.32** “Divert” or “Diverting” shall mean to receive, withdraw or develop and produce or capture Groundwater, Surface Water, CAP Water or Effluent by means of a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery, conduit, well, pump, turnout, dam, or other mechanical device or any other human act.

**2.33** “Effluent” shall mean Water that has been used for domestic, municipal or industrial purposes and that is available for use for any purpose, but Water shall not become Effluent solely as a result of having been used for hydropower generation on the Reservation.

**2.34** “Enforceability Date” shall mean the date described in Section 309(d)(1) of the Act.

**2.35** “Excess CAP Water” shall mean ‘Excess Water’ as that term is defined in the CAP Repayment Stipulation.

**2.36** “Excess CAP Water Contract” shall mean a contract between any person or entity and CAWCD for the delivery of Excess CAP Water.

**2.37** “Excess CAP Water Contractor” or “Excess CAP Water Contractors” shall mean one or more persons or entities having an Excess CAP Water Contract.

**2.38** “Exhibit” shall mean an exhibit to this Agreement as set forth in Paragraph 3.0.

*Dated as of November 1, 2012*

**2.39** “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 CAP Repayment Contract for the delivery of Colorado River water for the CAP including use of Colorado River water on Indian lands.

**2.40** “Gila River Adjudication Court” shall mean the Superior Court of the State of Arizona in and for the County of Maricopa exercising jurisdiction over the Gila River Adjudication Proceedings.

**2.41** “Gila River Adjudication Proceedings” shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated)*.

**2.42** “Groundwater” shall mean all Water beneath the surface of the Earth other than Surface Water.

**2.43** “HVID CAP Water” shall mean that water that was acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP Subcontract entitlement in accordance with Contract No. 3-07-30-W0290 among

*Dated as of November 1, 2012*

CAWCD, Harquahala Valley Irrigation District and the United States, and converted to CAP Indian Priority Water pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628 Title IV, 104 Stat. 4468, 4480.

**2.44** “Injury to Water Rights” shall mean an interference with, diminution of, or deprivation of, a Water Right under Federal, State or other law. The term “Injury to Water Rights” includes a change in the Groundwater table and any effect of such a change. The term “Injury to Water Rights” does not include any injury to water quality.

**2.45** “Large Reservoir” shall mean a Water storage reservoir located entirely on the Reservation with an Active Conservation Capacity exceeding 2,000 acre-feet.

**2.46** “Lease Agreement” –

**2.46.1** “CAWCD Lease Agreement” shall mean the agreement entered into among the WMAT, the Secretary and CAWCD pursuant to Paragraph 10.0, the form of which is attached as Exhibit 10.2.1.

**2.46.2** “City Lease Agreement” shall mean one or more of those agreements entered into among the WMAT, the Secretary, and one or more of the Cities pursuant to Paragraph 10.0, the forms of which are attached as Exhibits 10.1.1A through 10.1.1H.

**2.47** “Leased Water” shall mean the WMAT CAP Water that is leased to a City pursuant to a City Lease Agreement or CAWCD pursuant to the CAWCD Lease Agreement.

**2.48** “Leasing Cities” for purposes of Paragraph 10.0 shall mean the Cities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, and Tempe.

**2.49** “Little Colorado River Adjudication Court” shall mean the Superior Court of the State of Arizona in and for the County of Apache exercising jurisdiction over the Little Colorado River Adjudication Proceedings.

**2.50** “Little Colorado River Adjudication Proceedings” shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Apache styled *In re the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source, CIV No. 6417*.

**2.51** “Little Colorado River Watershed” shall mean all lands located within the Surface Water drainage of the Little Colorado River and its tributaries within the State of Arizona.

**2.52** “M&I Use” or “M&I Uses” shall mean the Diversion of Water for domestic, residential, municipal, industrial, and commercial uses, which are served by a municipal water delivery system.

**2.53** “Maximum Annual Depletion Amount” shall mean the maximum amount of Water depleted per Year as set forth in Paragraph 4.0 and Subparagraphs 5.1, 5.2, and 5.3.

**2.54** “Maximum Annual Diversion Amount” shall mean the maximum amount of Water Diverted per Year as set forth in Paragraph 4.0 and Subparagraphs 5.1, 5.2, and 5.3.

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**2.55** “Member” or “Members” shall mean any person or persons duly enrolled as members of the White Mountain Apache Tribe.

**2.56** “Net SRP Reservoir Storage” shall mean that amount of Water physically stored in SRP Reservoirs on May 1 of each year less water storage credits calculated by SRP for Water stored for the United States on behalf of the San Carlos Apache Tribe and the Bureau of Reclamation, the Salt River Pima-Maricopa Indian Community, the Fort McDowell Mohave-Apache Indian Community, the Gila River Indian Community, RWCD, the Buckeye Irrigation Company, the Buckeye Water Conservation and Drainage District, the City of Phoenix, the City of Tempe, the City of Scottsdale, the City of Mesa, the City of Glendale, and the City of Chandler. The storage credits referenced in the preceding sentence shall be those credits provided under the terms and conditions of judgments and agreements with the entities specified above as those judgments and agreements exist on January 1, 2008. The amount of Water physically stored in SRP Reservoirs used to perform the calculations of Net SRP Reservoir Storage pursuant to this Agreement shall not exceed SRP’s storage rights, as determined in the Gila River Adjudication, for SRP Reservoirs.

**2.57** “Off-Reservation Trust Land” shall mean land: (1) located outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the WMAT as of the Enforceability Date; and (2) depicted on the map attached as Exhibit 2.57.

**2.58** “Paragraph” shall mean a numbered paragraph of this Agreement including all Subparagraphs in such Paragraph.

**2.59** “Party” shall mean an entity represented by a signatory to this Agreement and “Parties” shall mean more than one of such entities. The State’s participation as a Party shall be as described in Subparagraph 16.5. The United States’ participation as a Party shall be in the capacity as described in Subparagraph 2.72.

**2.60** “Plan 6 Cities” shall mean the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe.

**2.61** “Roosevelt Water Conservation District” or “RWCD” shall mean the entity of that name that is a political subdivision of the State and an irrigation district organized under the laws of the State.

**2.62** “Salt River Reservoir System” shall mean the four reservoirs operated by SRP on the Salt River created by the impoundment of Water behind Stewart Mountain Dam, Mormon Flat Dam, Horse Mesa Dam, and Modified Theodore Roosevelt Dam and any dams that are constructed after December 31, 2008, to the extent that they replace and do not exceed then-existing storage capacity of any of those four dams.

**2.63** “Salt River Watershed” shall mean all lands located within the Surface Water drainage of the Salt River and its tributaries.

**2.64** “Secretary” shall mean the Secretary of the United States Department of the Interior.

**2.65** “SRP” shall mean the Salt River Project Agricultural Improvement and Power

*Dated as of November 1, 2012*

District, a political subdivision of the State, and the Salt River Valley Water Users' Association, an Arizona Territorial Corporation.

**2.66** “SRP Reservoirs” shall mean the Salt River Reservoir System plus the Verde River Reservoir System.

**2.67** “SRRD” shall mean the Salt River Reservoir District as defined on December 31, 2007 in Article IV, Section 3, of the Articles of Incorporation of the Salt River Valley Water Users' Association.

**2.68** “State” shall mean the State of Arizona.

**2.69** “Subparagraph” shall mean a numbered subparagraph of this Agreement.

**2.70** “Surface Water” shall mean all Water that is appropriable under State law. For purposes of the definition of “Water Right” in Paragraph 12.0, the term “Surface Water” shall also include Colorado River water.

**2.71** “Total Water Lease Charge” shall mean that amount described in Subparagraph 10.1.1.2 and as described in Subparagraph 4.3 of the City Lease Agreement.

**2.72** “United States” or “United States of America” in any given reference herein shall mean the United States acting in the capacity as set forth in said reference. When the term “United States” or “United States of America” is used in reference to a particular agreement or contract, the term shall mean the United States acting in the capacity as set forth in such agreement or contract.

*Dated as of November 1, 2012*

**2.73** “Use” shall mean any beneficial use including instream flows, recharge, underground storage, recovery or any other use recognized as beneficial under applicable law.

**2.74** “Verde River Reservoir System” shall mean the two reservoirs operated by SRP on the Verde River created by the impoundment of Water behind Bartlett Dam and Horseshoe Dam, and any dams that are constructed after December 31, 2008, to the extent that they replace and do not exceed then-existing storage capacity of any of those two dams.

**2.75** “Water” when used without a modifying adjective shall mean Groundwater, Surface Water, CAP Water, or Effluent.

**2.76** “Water Code” shall mean that tribal ordinance to be adopted by the WMAT pursuant to Paragraph 15.0.

**2.77** “Water Right” shall mean any right in or to Groundwater, Surface Water or Effluent under Federal, State, or other law.

**2.78** “White Mountain Apache Tribe” or “WMAT” shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. § 476).

**2.79** “WMAT CAP Water” shall mean CAP Water to which the WMAT is entitled pursuant to the WMAT CAP Water Delivery Contract.

**2.80** “WMAT CAP Water Delivery Contract” shall mean (A) Contract No. 08-XX-30-W0529 between the WMAT and the United States dated \_\_\_\_\_, a copy of which is attached hereto as Exhibit 7.1; and (B) any amendments to that contract.

*Dated as of November 1, 2012*

**2.81** “WMAT Reservation” or “Reservation” shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the “Fort Apache Reservation” pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached as Exhibit 2.81. The depiction of the Reservation on the map attached as Exhibit 2.81 shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

**2.82** “WMAT Rural Water System” shall mean the municipal, rural, and industrial Water Diversion, storage, and delivery system described in Section 307 of the Act.

**2.83** “Year” shall mean a calendar year. When not capitalized, the term “year” shall have the meaning in the Paragraph or Subparagraph in which the term is used.

### **3.0 EXHIBITS**

**3.1** The following is a list of Exhibits attached to this Agreement, all of which are incorporated herein by reference. All of the Parties have reviewed the Exhibits. Prior to the Enforceability Date, no Party shall object to the terms and conditions of any of the Exhibits in any judicial, administrative or legislative proceedings relating to the approval of this Agreement; provided, however, that each Exhibit shall be binding only on the

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specific Parties to such Exhibit unless expressly provided otherwise in Exhibits 12.9.6.1 or 12.9.6.2. Amendments to Exhibits shall be governed by Subparagraph 16.4. No Party shall have any right to object to an amendment to such an Exhibit except as provided in Subparagraph 16.4. No Party shall have, by reason of this Agreement, any third-party enforcement or other rights under any Exhibit to which said Party is not a party, unless otherwise provided in the Exhibit or in Exhibits 12.9.6.1 or 12.9.6.2.

<b>PARAGRAPH NO. – EXHIBIT NO.</b>	<b>DESCRIPTION</b>
2.2	White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010)
2.57	Map Showing Off-Reservation Trust Land
2.81	Map Showing the WMAT Reservation
5.7.2	Graph of Maximum Storage in Large Reservoirs
7.1	WMAT CAP Water Delivery Contract
9.4	Standard Form of CAP Subcontract for M&I Use

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- 10.1.1A Lease Agreement among the  
WMAT, the Secretary and the City  
of Avondale
- 10.1.1B Lease Agreement among the  
WMAT, the Secretary  
and the City of Chandler
- 10.1.1C Lease Agreement among the  
WMAT, the Secretary  
and the City of Gilbert
- 10.1.1D Lease Agreement among the  
WMAT, the Secretary  
and the City of Glendale
- 10.1.1E Lease Agreement among the  
WMAT, the Secretary  
and the City of Mesa
- 10.1.1F Lease Agreement among the  
WMAT, the Secretary  
and the City of Peoria
- 10.1.1G Lease Agreement among the  
WMAT, the Secretary

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and the City of Phoenix

- 10.1.1H Lease Agreement among the  
WMAT, the Secretary  
and the City of Tempe
- 10.1.1.1A Form of Voluntary Assignment and  
Assumption of Leased Water
- 10.1.1.1B Form of Assignment and  
Assumption of Leased Water
- 10.2.1 Lease Agreement among the  
WMAT, the Secretary  
and the CAWCD
- 11.2 Sample Report Required by  
Subparagraph 11.2
- 11.3.1.1.A Inventory of Stockponds
- 11.3.1.1.B Inventory of Lakes
- 11.3.1.1.C Inventory of Other Impoundments
- 11.3.1.2 Lakes, Stockponds and Other  
Impoundments Diversion and  
Depletion Calculation

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- 11.3.2.3 Irrigation Use Diversion and  
Depletion Calculation
- 11.3.3.2 Municipal and Industrial Use  
Diversion and Depletion Calculation
- 11.3.4.2 Artificial Snow Making Use  
Depletion Calculation
- 11.3.7.2 Mining Use Depletion Calculation
- 12.1 Waiver and Release of Claims by the  
Parties Other than the WMAT on  
Behalf of Itself and its Members and  
the United States Acting in its  
Capacity as Trustee for the WMAT  
and its Members
- 12.2 Waiver and Release of Claims for  
Water Rights and Injury to Water  
Rights by the WMAT, on behalf of  
itself and its Members, and the  
United States, acting in its capacity  
as trustee for the WMAT and its  
Members

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- 12.3 Waiver and Release of Claims By  
the WMAT, on Behalf of Itself and  
its Members, Against the United  
States (Except in the Capacity of  
the United States as Trustee for  
Other Indian Tribes)
  
- 12.4 Waiver and Release of Claims By  
the United States in All Capacities  
(Except as Trustee for an Indian  
Tribe Other than the WMAT)  
Against the WMAT and its  
Members
  
- 12.9.6.1 Form of Judgment and Decree in the  
Gila River Adjudication Proceedings
  
- 12.9.6.2 Form of Judgment and Decree in the  
Little Colorado River Adjudication  
Proceedings
  
- 14.7.2 Land classifications subject to  
RWCD credit of 5.6% of water  
diverted at Granite Reef Dam

16.8

Water Commissioner's Report of  
June 3, 1977

**4.0 WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS**

**4.1** The WMAT and the United States acting in its capacity as trustee for the WMAT shall have the following permanent quantified Water Rights to the Use of Water on the Reservation and on Off-Reservation Trust Land:

Source	Maximum Annual Diversion Amount	Maximum Annual Depletion Amount	Reference
<b>4.1.1</b> Surface Water and Groundwater Diverted on the Reservation or on Off-Reservation Trust Land from sources within the Salt River Watershed	64,000 AFY	21,800 AFY	As set forth in Paragraphs 5.0, 6.0, and 11.0
<b>4.1.2</b> Surface Water and Groundwater Diverted on the Reservation or on Off-Reservation Trust Land from sources within the Salt River Watershed or the Little Colorado River Watershed	7,000 AFY	4,000 AFY	As set forth in Paragraphs 5.0, 6.0, and 11.0

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<b>4.1.3</b> Surface Water and Groundwater Diverted on the Reservation or on Off-Reservation Trust Land from sources within the Salt River Watershed the first Use of which shall not commence until after the Year 2100.	3,000 AFY	1,200 AFY	As set forth in Subparagraph 5.2 and Paragraph 11.0
<b>4.1.4</b> White Mountain Apache Tribe Central Arizona Project Water	At least 25,000 AFY	25,000 AFY	As set forth in Paragraphs 7.0 and 11.0
<b>4.1.5</b> Total	99,000 AFY Subject to Subparagraph 4.1.4	52,000 AFY	

**4.2** The Water Rights of the WMAT described in this Paragraph 4.0 shall be held in trust by the United States acting in its capacity as trustee for the WMAT and shall not be subject to forfeiture or abandonment.

**4.3** In accordance with the terms of Subparagraphs 5.1, 5.2, and 5.3 and Paragraph 11.0, the WMAT and the United States acting in its capacity as trustee for the WMAT, collectively, shall not Divert, subject to Subparagraph 4.1.4, more than 99,000 AFY from all available sources of Water on the Reservation or on Off-Reservation Trust Land nor cause the Depletion of the amount Diverted from all available sources of Water on the Reservation or on Off-Reservation Trust Land to exceed 52,000 AFY.

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**4.4** All Water Diverted or Depleted on the Reservation or on Off-Reservation Trust Land by Members or pursuant to any agreement or authorization by the WMAT or the United States acting in its capacity as trustee for the WMAT shall be considered for the purpose of this Agreement to be Diverted or Depleted by the WMAT or the United States acting in its capacity as trustee for the WMAT.

**4.5** The Water Rights of the WMAT and the United States acting in its capacity as trustee for the WMAT as quantified in this Paragraph 4.0 may be used for any Use on the Reservation, including any land finally determined to be part of the Reservation under Subparagraph 4.14, or on Off-Reservation Trust Land; provided, however, that Use of WMAT CAP Water shall be as provided in Paragraph 7.0.

**4.6** Surface Water, Groundwater and Effluent purchased or acquired subsequent to the Enforceability Date by the WMAT or the United States acting in its capacity as trustee for the WMAT pursuant to state law from sources outside of the Reservation and outside of Off-Reservation Trust Land shall not be subject to the quantification limits of the WMAT's Water Rights specified in this Paragraph 4.0 or Subparagraphs 5.1, 5.2 and 5.3.

**4.7** Except for Use of WMAT CAP Water as provided in Paragraph 7.0, no Water available for Use by the WMAT or by the United States acting in its capacity as trustee for the WMAT under this Agreement and the Act may be sold, leased, transferred or used outside the boundaries of the Reservation or Off-Reservation Trust Land other than pursuant to an exchange.

**4.8** All land held by the United States in trust for the WMAT as Off-Reservation Trust Land and all land within the Reservation shall have only those Water Rights specifically quantified in this Paragraph 4.0 for the WMAT and the United States acting in its capacity as trustee for the WMAT.

**4.9** Except for CAP Water Diverted from the CAP System, the right of the WMAT and the United States acting in its capacity as trustee for the WMAT to Divert the Water Rights quantified by this Paragraph 4.0 is subject to the physical availability of such Water on the Reservation or on the Off-Reservation Trust Land and is subject to the WMAT's and the United States' acting in its capacity as trustee for the WMAT's priorities for the Diversion of such Water Rights as set forth in Paragraph 5.5 and in the Judgments and Decrees to be entered in the Gila River Adjudication Proceedings and the Little Colorado River Adjudication Proceedings, copies of which are attached hereto as Exhibits 12.9.6.1 and 12.9.6.2.

**4.10** All Diversions of Water within the Reservation and on Off-Reservation Trust Land, together with all WMAT CAP Water used by the WMAT outside of the Reservation and outside of Off-Reservation Trust Land, and all WMAT CAP Water leased to others or exchanged pursuant to Paragraph 7.0, shall be counted in determining compliance by the WMAT and the United States acting in its capacity as trustee for the WMAT with the Maximum Annual Diversion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3. Diversions shall be measured or calculated as provided in Paragraph 11.0.

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**4.11** All Depletions of Water in each Year from Diversions of Water within the Reservation and on Off-Reservation Trust Land, together with all WMAT CAP Water used by the WMAT outside of the Reservation and outside of Off-Reservation Trust Land, and all WMAT CAP Water leased to others or exchanged pursuant to Paragraphs 7.0, 9.0 and 10.0 shall be counted in determining compliance by the WMAT and the United States acting in its capacity as trustee for the WMAT with the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3. Depletions shall be measured or calculated as provided in Paragraph 11.0.

**4.12** Notwithstanding anything to the contrary in this Agreement, any Diversions of Water by the WMAT or the United States acting in its capacity as trustee for the WMAT on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed that occur when the Salt River Reservoir System is full and the amount of Water in the Salt River Reservoir System is increasing shall not be counted in determining compliance with the Maximum Annual Diversion Amount from the Salt River Watershed specified in Paragraph 4.0 and Subparagraphs 5.1 and 5.2. Likewise, any Depletions of Water Diverted under the circumstances described in the preceding sentence shall not be counted in determining compliance with the Maximum Annual Depletion Amount from the Salt River Watershed specified in Paragraph 4.0 and Subparagraphs 5.1 and 5.2. The Salt River Reservoir System shall be deemed full for purposes of this Subparagraph when the volume of Water stored in the Salt River Reservoir System is equal to the capacity of the Salt River Reservoir System. For purposes of this Subparagraph 4.12, the capacity of the Salt River Reservoir System shall mean the capacity of those reservoirs, including the new conservation space in Modified Theodore Roosevelt Dam, available to store Water

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on a continuous basis for irrigation, power, municipal, industrial or other purposes. SRP shall notify the WMAT and the United States acting in its capacity as trustee for the WMAT of an impending spill as soon as practicable and notify them of the date the spill ends.

**4.13** In the event the Maximum Annual Diversion Amounts or the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3 are exceeded in any Year by the WMAT or the United States acting in its capacity as trustee for the WMAT, then the Maximum Annual Diversion Amounts or the Maximum Annual Depletion Amounts, as applicable, shall be reduced by the amount of any such exceedance for such Water source in the following Year.

**4.14** Except as provided in Subparagraph 4.6, all Uses of Water on land outside of the Reservation, if and when that land is subsequently and finally determined to be part of the Reservation through resolution of any dispute between the WMAT and the United States over the location of the Reservation boundary, and any fee land within the Reservation placed into trust and made part of the Reservation, shall be subject to the Maximum Annual Diversion Amounts and the Maximum Annual Depletion Amounts specified in Paragraph 4.0 and Subparagraphs 5.1, 5.2, and 5.3.

**5.0 SURFACE WATER**

**5.1** The WMAT and the United States acting in its capacity as trustee for the WMAT shall have the permanent right to Divert for Use on the Reservation and on Off-Reservation Trust Land the Maximum Annual Diversion Amount of 71,000 AFY from

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all sources of Surface Water on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed, provided that the Maximum Annual Depletion Amount of all such Diversions shall not exceed 25,800 AFY. Up to 7,000 AFY of the 71,000 AFY Maximum Annual Diversion Amount and up to 4,000 AFY of the 25,800 AFY Maximum Annual Depletion Amount specified in the preceding sentence may be Diverted and Depleted from sources of Water within the Little Colorado River Watershed.

**5.2** Commencing after the Year 2100, the WMAT and the United States acting in its capacity as trustee for the WMAT also shall have the additional permanent right to Divert for Use on the Reservation and on Off-Reservation Trust Land the additional Maximum Annual Diversion Amount of 3,000 AFY from all sources of Surface Water on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed, provided the additional Maximum Annual Depletion Amount of all of such Diversions does not exceed 1,200 AFY.

**5.3** In addition to the quantities of Water set forth in Subparagraphs 5.1 and 5.2, the WMAT and the United States acting in its capacity as trustee for the WMAT shall also have the additional permanent right to Divert for Use on the Reservation and on Off-Reservation Trust Land the additional Maximum Annual Diversion Amount of at least 25,000 AFY from all sources of Surface Water on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed pursuant to an exchange of WMAT CAP Water in accordance with the terms of Paragraph 7.0, provided the

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additional Maximum Annual Depletion Amount of all of such Diversions does not exceed 25,000 AFY.

**5.4** The Maximum Annual Diversion Amounts and the Maximum Annual Depletion Amounts described in Subparagraphs 5.1 and 5.2 shall include in each Year the amounts of Groundwater Diverted and Depleted pursuant to Subparagraph 6.1 in that same Year.

**5.5** The priority date for the administration of the Water Rights of the WMAT and the United States acting in its capacity as trustee for the WMAT described in Subparagraphs 4.1.1, 4.1.2, 4.1.3, 5.1, 5.2, and 6.1, for Uses on the Reservation shall be November 9, 1871. The priority date for the administration of the Water Rights of the WMAT and the United States acting in its capacity as trustee for the WMAT described in Subparagraphs 4.1.1, 4.1.2, 4.1.3, 5.1, 5.2, and 6.1 for Uses on Off-Reservation Trust Lands shall be November 4, 1985. The priority for the administration of the WMAT CAP Water shall be as specified in Subparagraphs 7.2.1 and 7.2.2. The priority date for the administration of the Water Rights of the WMAT and the United States acting in its capacity as trustee for the WMAT for lands finally determined to be part of the Reservation through resolutions of any dispute between the WMAT and the United States over the location of the Reservation boundary shall be November 9, 1871.

**5.6** All Diversions and Depletions associated with the operation of the White Mountain Apache Tribe Rural Water System, authorized under Section 307 of the Act, shall be subject to the terms of this Agreement.

**5.7 RESERVOIRS OTHER THAN MINER FLAT**

- 5.7.1** The United States acting in its capacity as trustee for the WMAT has asserted claims to Water in the Gila River Adjudication Proceedings from the Salt River Watershed. These claims contemplate construction of reservoirs along the White River, Black River, Carrizo Creek, Bonito Creek and Salt River. Except for the White Mountain Apache Tribe Rural Water System as authorized in Section 307 of the Act, this Agreement does not authorize the construction of any such reservoir. Except as provided in this Subparagraph 5.7.1, prior to the construction of any reservoir having a capacity of greater than 2,000 acre-feet, the WMAT and the Secretary shall execute a separate agreement with SRP regarding the operation of any such new reservoir. No such separate agreement shall be required for Large Reservoirs, Miner Flat Dam and Reservoir, and one Large Reservoir on the White River below Miner Flat Dam with an Active Conservation Capacity not exceeding 10,000 acre-feet.
- 5.7.2** Except as provided in Subparagraph 5.7.3, if the combined aggregate amount of Water stored in Large Reservoirs on May 1 of each Year is greater than the percentage of Active Conservation Capacity shown by the point of intersect of the line on Exhibit 5.7.2 relative to Net SRP Reservoir Storage on May 1 of each Year, the Water in storage in such Large Reservoirs in excess of the percentage of Active Conservation Capacity at the point of intersect on Exhibit 5.7.2 shall be either:

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- 5.7.2.1** Released by the WMAT or the United States acting in its capacity as trustee for the WMAT from one or more of the Large Reservoirs no later than July 1 of such Year to flow off of the Reservation, or
- 5.7.2.2** Deducted from any existing long term storage credits the WMAT may possess on May 1 of such Year as the result of the recharge and storage of CAP Water, provided that such credits are transferred to SRP by June 1 of such Year and the WMAT or the United States acting in its capacity as trustee for the WMAT pays for the costs and charges associated with such transfer including the cost of recovery of such stored CAP Water, or
- 5.7.2.3** Reduced to the requisite percentage of Active Conservation Capacity through a combination of releases pursuant to Subparagraph 5.7.2.1 and deductions of existing long term storage credits pursuant to Subparagraph 5.7.2.2.
- 5.7.3** One Large Reservoir on the White River with an Active Conservation Capacity not exceeding 10,000 acre-feet and Miner Flat Dam and Reservoir located on the north fork of the White River with a capacity of not more than 9,000 acre-feet shall be exempt from the requirements of Subparagraph 5.7.2.
- 5.7.4** The WMAT may exchange CAP Water for the purpose of storage in reservoirs located on the Reservation. For purposes of the calculation in Subparagraph 5.7.2, the amount of CAP Water exchanged with SRP or others and stored within Large Reservoirs on the Reservation shall not be included within the combined aggregate amount of Water stored in Large Reservoirs on May 1 of each Year.

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Any exchange of WMAT CAP Water shall be in accordance with the terms of Paragraph 7.0.

- 5.7.5** The evaporation losses associated with the storage of Water by the WMAT or the United States acting in its capacity as trustee for the WMAT in any reservoir, calculated as provided in Subparagraph 11.3.1.2 and Exhibit 11.3.1.2, shall be considered Diversions and Depletions by the WMAT and the United States acting in its capacity as trustee for the WMAT for purposes of this Agreement and shall be deducted from the Maximum Annual Diversion Amount and the Maximum Annual Depletion Amount.
- 5.7.6** In the event the WMAT or the United States acting in its capacity as trustee for the WMAT fail to release by July 2 the requisite amount of Water as required by Subparagraph 5.7.2, then by June 1 of the following Year the WMAT or the United States on their behalf shall release from storage the amount of Water which otherwise would have been required to be released from storage the prior Year pursuant to Subparagraph 5.7.2, in addition to any Water required to be released for the current Year.

**6.0 GROUNDWATER**

- 6.1** The WMAT and the United States acting in its capacity as trustee for the WMAT shall have the permanent right to Divert Groundwater from any location within the Reservation, including any land finally determined to be part of the Reservation under Subparagraph 4.14, and on Off-Reservation Trust Land, subject to the Maximum Annual Diversion Amounts and the Maximum Annual Depletion Amounts specified in Paragraph

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4.0 and Subparagraphs 5.1 and 5.2. This Agreement does not prevent the WMAT from transporting onto the Reservation, Groundwater obtained from Off-Reservation Trust Land pumping activities.

**7.0 CAP WATER**

**7.1** Pursuant to Section 306 of the Act, and in accordance with Section 104 (d) (1) of the AWSA, the Secretary shall execute the WMAT CAP Water Delivery Contract, a copy of which is attached hereto as Exhibit 7.1.

**7.2** Pursuant to Sections 305 and 306 of the Act, the Secretary shall deliver to WMAT, directly or through an exchange with an individual or entity acceptable to the WMAT and the Secretary, upon the terms and conditions set forth in the WMAT CAP Water Delivery Contract, the following described CAP Water, which is also referenced in Subparagraph 4.1.4:

**7.2.1** 23,782 AFY of CAP NIA Priority Water that was previously allocated to non-Indian agricultural entities, that was retained by the Secretary for reallocation to Arizona Indian tribes pursuant to Section 104 (a) (1) (A) (iii) of the AWSA, and reallocated by the Secretary to the WMAT pursuant to Section 305(b)(1)(A) of the Act.

**7.2.2** 1,218 AFY of HVID CAP Water reallocated by the Secretary to the WMAT pursuant to Section 305(b)(1)(B) of the Act.

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7.3 Pursuant to Section 306(b)(1) of the Act, the WMAT CAP Water Delivery Contract 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, and shall be without limit as to term.

7.4 Pursuant to Section 306(a)(1)(A) of the Act and Paragraph 9.0, the WMAT may, on approval of the Secretary, enter into contracts or options to lease, contracts to exchange, or options to exchange WMAT CAP Water within Maricopa, Pinal, Pima and Yavapai counties, Arizona, providing for the temporary delivery to any individual or entity of any portion of the WMAT CAP Water. The term of a contract or option to lease shall not be longer than one hundred (100) years. A contract or option to exchange shall be for the term provided for in the contract or option. A lease or option to lease providing for the temporary delivery of WMAT CAP Water shall require the lessee to pay to the CAP Operating Agency all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges associated with the leased water. The WMAT may, with the approval of the Secretary, renegotiate any lease at any time during the term of that lease, subject to the condition that the term of the renegotiated lease shall not exceed one hundred (100) years. No portion of the WMAT's CAP Water may be permanently alienated.

7.5 Exchanges of the WMAT CAP Water for Water from the Salt River Watershed upstream of Modified Roosevelt Dam shall be subject to the terms and conditions of one or more agreements to be negotiated among the WMAT, the United States, SRP, Plan 6 Cities, and any other necessary parties. Upon the WMAT's request, SRP, the Plan 6 Cities, and any other necessary parties will negotiate the terms of an exchange agreement with the WMAT. SRP and the Plan 6 Cities will not unreasonably withhold agreement to

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such an exchange. In accordance with Section 306(a)(1)(A) of the Act, any such exchange agreement shall be subject to the approval of the Secretary. SRP shall accept delivery of WMAT CAP Water from WMAT in exchange for Diversions of Water from the Salt River Watershed by WMAT, pursuant to an exchange agreement to be negotiated between WMAT and SRP, unless SRP cannot receive or beneficially use the WMAT CAP Water. SRP and the Plan 6 Cities agree that they will not charge the WMAT for losses associated with foregone hydropower generation on the Salt River for exchanges of CAP Water between the WMAT and SRP for Water Uses on the Reservation by the WMAT.

**7.6** No WMAT CAP Water may be leased, exchanged, forborne or otherwise transferred in any way by the WMAT for Use directly or indirectly outside of the State of Arizona.

**7.7** Pursuant to Section 306(a)(3)(A) of the Act, the WMAT, and not the United States in any capacity, shall be entitled to all consideration due to the WMAT under any contract or option to lease or exchange WMAT CAP Water entered into by the WMAT. The United States in any capacity shall have no trust obligation or other obligation to monitor, administer or account for, in any manner: (1) any funds received by the WMAT as consideration under a contract or option to lease or exchange WMAT CAP Water; or (2) the expenditure of those funds.

**7.8** Pursuant to Sections 306(a)(4)(A) and (B) of the Act, all WMAT CAP Water shall be delivered through the CAP System; and if the delivery capacity of the CAP System is significantly reduced or anticipated to be significantly reduced for an extended

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period of time, the WMAT shall have the same CAP delivery rights as a CAP Contractor or CAP Subcontractor that is allowed to take delivery of Water other than through the CAP System.

**7.9** Pursuant to Section 306(a)(5) of the Act, the WMAT may use WMAT CAP Water on or off the Reservation for any purpose but all such Uses shall be considered Diversions and Depletions under Paragraph 4.0 and Subparagraph 5.3 and accounted as provided for in Paragraph 11.0.

**7.10** The charges for delivery of WMAT CAP Water pursuant to the WMAT CAP Water Delivery Contract shall be calculated in accordance with the CAP Repayment Stipulation.

**7.11 PAYMENT OF CAP WATER DELIVERY CHARGES**

**7.11.1** Pursuant to Section 305(d) of the Act, for the purpose of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of WMAT CAP Water, whether such Water is delivered for Use by the WMAT or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of WMAT CAP Water entered into by the WMAT, shall be (1) non-reimbursable and (2) excluded from the repayment obligation of the CAWCD.

**7.11.2** Pursuant to Sections 305(c) and 306(a)(8) of the Act, no CAP Water service capital charges shall be due or payable for WMAT CAP Water, whether such

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Water is delivered for Use by the WMAT or pursuant to a contract or option to lease or exchange WMAT CAP Water entered into by the WMAT.

**7.11.3** Pursuant to Section 306(a)(1)(A)(iii) of the Act, any lease or option to lease providing for the temporary delivery to others of any WMAT CAP Water shall require the lessee to pay the CAP Operating Agency all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges associated with the delivery of the leased water. Neither the WMAT nor the United States in any capacity shall be responsible for the payment of any charges for the delivery of WMAT CAP Water leased to others.

**7.11.4** The CAP Operating Agency shall be paid the CAP Fixed OM&R Charges associated with the delivery of all WMAT CAP Water. Pursuant to Section 306(a)(6) of the Act, as authorized by 43 U.S.C. §1543(f)(2)(A), as amended, to the extent that funds are available in the Lower Colorado River Basin Development Fund established by subsection (a) of that section, the Secretary shall pay to the CAP Operating Agency the CAP Fixed OM&R Charges associated with the delivery of WMAT CAP Water, and to the extent that funds are not available from the Lower Colorado River Basin Development Fund, such charges shall be paid by the WMAT. CAP Fixed OM&R Charges associated with the delivery of WMAT CAP Water leased to others shall be paid as provided in Subparagraph 7.11.3.

**7.11.5** The WMAT shall pay the CAP Operating Agency all CAP Pumping Energy Charges associated with the delivery of WMAT CAP Water, except for WMAT

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CAP Water leased to others. Notwithstanding the preceding sentence, other persons or entities with whom the WMAT may exchange WMAT CAP Water may agree with the WMAT to pay the CAP Operating Agency the CAP Pumping Energy Charges associated with the delivery of WMAT CAP Water pursuant to such exchange. CAP Pumping Energy Charges associated with the delivery of WMAT CAP Water leased to others shall be paid as provided in Subparagraph 7.11.3.

**7.12** The CAP Operating Agency shall have no responsibility to deliver any WMAT CAP Water for which CAP Fixed OM&R Charges and CAP Pumping Energy Charges have not been paid in advance. The charges for delivery of WMAT CAP Water shall be calculated in accordance with the CAP Repayment Stipulation.

**7.13** The WMAT shall schedule delivery of WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract.

**7.14** The WMAT shall be entitled to enter into contracts for Excess CAP Water as provided in the CAP Repayment Stipulation. The WMAT may use such Excess CAP Water on or off the Reservation for any purpose and such Use does not constitute a Diversion or Depletion for purposes of Paragraph 4.0.

**7.15** Nothing in this Agreement limits the right of the WMAT to enter into an agreement with the Arizona Water Banking Authority (or any successor entity) established by section 45-2421 of the Arizona Revised Statutes in accordance with State law.

**7.16 DELIVERY OF CAP WATER IN TIMES OF SHORTAGE**

**7.16.1 CAP NIA PRIORITY WATER.** If, in any Year, the Available CAP Supply is insufficient to meet all demands under CAP Contracts or CAP Subcontracts for the delivery of CAP NIA Priority Water, then the Secretary and the CAP Operating Agency shall pro-rate the CAP NIA Priority Water among the CAP Contractors and CAP Subcontractors holding such entitlements on the basis of the quantity of CAP NIA Priority Water used by each such CAP Contractor or CAP Subcontractor in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water. The Secretary shall determine the quantity of CAP NIA Priority Water used by the Gila River Indian Community and the Tohono O’odham Nation in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water, in a manner consistent with the settlement agreements with these tribes.

**7.16.2 HVID CAP WATER.** HVID CAP Water has the priority of CAP Indian Priority Water. If a time of shortage exists, as described in the WMAT CAP Water Delivery Contract, the amount of HVID CAP Water available to the WMAT in such Year shall be computed in accordance with subsection 5.8 of the WMAT CAP Water Delivery Contract.

**7.17 FIRING OF WMAT CAP WATER**

**7.17.1** The United States shall firm three thousand seven hundred fifty (3,750) AFY of WMAT CAP NIA Priority Water for the benefit of WMAT for the one hundred (100) Year period beginning on January 1, 2008, with priority equivalent to CAP

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M&I Priority Water, as provided in Sections 105(a) and 105(b)(1)(B) of the AWSA and Section 305(b)(1)(A)(i) of the Act, to be delivered in the same manner as water with a municipal and industrial delivery priority in the Central Arizona Project system is delivered during water shortages.

- 7.17.2** The State shall firm three thousand seven hundred fifty (3,750) AFY of WMAT CAP NIA Priority Water for the benefit of WMAT for the one hundred Year period beginning on January 1, 2008, with priority equivalent to CAP M&I Priority Water, as provided in Sections 105(a) and 105(b)(2)(B) of the AWSA and Section 305(b)(1)(A)(ii) of the Act and in accordance with the terms of 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, to be delivered in the same manner as water with a municipal and industrial delivery priority in the Central Arizona Project system is delivered during water shortages.
- 7.17.3** The United States' and the State of Arizona's obligation under Subparagraphs 7.17.1 and 7.17.2, respectively, to provide water to firm certain amounts of WMAT CAP NIA Priority Water to be delivered under this Agreement, under the WMAT CAP Water Delivery Contract, or under any leases or exchanges entered into under this Agreement or the WMAT CAP Water Delivery Contract does not extend beyond December 31, 2107; provided, however, that neither the United States nor the State of Arizona is prohibited by this Subparagraph 7.17.3 from providing water to firm any deliveries of WMAT CAP NIA Priority Water beyond December 31, 2107, if, subject to the enactment of any necessary additional statutory authorization, either agrees to do so in any future agreements.

**7.18** Pursuant to Section 306(a)(7) of the Act, the Secretary waives the right of the Secretary to capture all Return Flow from WMAT CAP Water delivered to the WMAT through an exchange with SRP or any other individual or entity acceptable to the WMAT and the Secretary, flowing from the exterior boundaries of the WMAT Reservation. WMAT may recapture and reuse Return Flow within the WMAT Reservation. Return Flow for purposes of this Subparagraph 7.18 shall mean all waste water, seepage, and Groundwater which originates or results from WMAT CAP Water delivered to the WMAT through an exchange with SRP or any other individual or entity acceptable to the WMAT and the Secretary.

**8.0 ALLOCATION OF WMAT DEPLETIONS OF WATER FROM THE SALT RIVER WATERSHED**

**8.1** For each Year following the Year in which the Enforceability Date occurs, fourteen and eighty-one one hundredths (14.81) percent of the actual Annual Depletion Amount from all sources of Water Diverted on the Reservation and on Off-Reservation Trust Land within the Salt River Watershed, other than Depletions resulting from the exchange of WMAT CAP Water, calculated as provided in Paragraph 11.0, shall be allocated to RWCD up to a maximum of 4,000 AFY.

**8.1.1** RWCD hereby authorizes SRP to transfer to SRP on an annual basis from the credits accruing to RWCD under RWCD's entitlement, as defined in Subparagraph 14.7, the number of credits on an acre-foot-for-acre-foot basis equal to fourteen and eighty-one one hundredths (14.81) percent of the total number of acre-feet of Water Depleted during the prior Year by WMAT Diversions on the

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Reservation and on Off-Reservation Trust Land within the Salt River Watershed, other than Depletions resulting from the exchange of WMAT CAP Water.

**8.1.2** RWCD credits shall be considered accrued for the purposes of Subparagraph 8.1 at the time the credits are earned by RWCD under Subparagraph 14.7, regardless of when the credits are added to RWCD's water account by SRP. In the event RWCD has insufficient credits in its water account with SRP to fully off-set its share of the WMAT Depletions in any Year, the RWCD credit deficit shall be carried forward by SRP to the next Year in which RWCD has sufficient credits in its water account with SRP to reduce or eliminate the deficit, as applicable.

**8.2** RWCD's direction for the transfer of water credits to SRP pursuant to the terms of Subparagraph 8.1 shall be binding upon its successors and assigns. Should any other entity succeed to all of RWCD's entitlement, it shall assume RWCD's rights and obligations to SRP under Subparagraph 8.1.

**8.3** Neither the WMAT nor SRP shall be charged any fees by RWCD for the performance of the obligations of Subparagraph 8.1.

**9.0 TERMS AND CONDITIONS OF FUTURE WMAT CAP WATER LEASE AGREEMENTS**

**9.1** The WMAT may enter into leases of WMAT CAP Water as provided in Subparagraph 7.4. Such leases shall conform to the provisions of Paragraph 9.0.

**9.2** The lessee shall pay all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges to the CAP Operating Agency for the leased WMAT CAP Water.

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**9.3** The Secretary or the CAP Operating Agency shall deliver the leased WMAT CAP Water to the lessee as further provided herein. Neither the Secretary nor the CAP Operating Agency shall be obligated to make deliveries to such lessee if, in the judgment of the Secretary or the CAP Operating Agency, such deliveries would limit deliveries of CAP Water to other CAP Contractors, including the WMAT, or CAP Subcontractors to a degree greater than would direct deliveries to the WMAT at the CSIF.

**9.4** Subject to the provisions of the lease, the Secretary or the CAP Operating Agency shall deliver WMAT CAP Water to the lessee in accordance with water delivery schedules provided by the lessee to the Secretary or the CAP Operating Agency. The lease shall include water ordering procedures equivalent to those contained in Article 4.4 of the standard form of CAP Subcontract for M&I Use, a copy of which is attached hereto as Exhibit 9.4.

**9.5** In no event shall the Secretary or the CAP Operating Agency be required to deliver to the lessee from the CAP System in any one (1) month a total amount of WMAT CAP Water greater than eleven percent (11.0%) of the lessee's maximum annual entitlement under the lease; provided however, that that Secretary or the CAP Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP Water to other CAP Contractors, CAP Subcontractors and Excess CAP Water Contractors as determined by the Secretary and the CAP Operating Agency if the lessee agrees to accept such increased deliveries.

**9.6** WMAT CAP Water to be delivered to the lessee pursuant to the lease shall be delivered at such turnouts on the CAP System as are agreed by the Secretary, the CAP Operating Agency and the lessee.

**9.7** Except as provided in Subparagraph 10.1.1.1, the lessee may not transfer, assign or sublease its leased WMAT CAP Water.

**9.8** The lease shall impose upon the lessee terms and conditions equivalent to those contained in Subarticles 4.3(a), 4.3(b), 4.3(c), 4.5(b), 4.5(c), and 4.5(d), and Articles 4.6, 4.10 and 6.9 of Exhibit 9.4. Although Exhibit 9.4 is the standard form of CAP Subcontract for M&I Use, nothing in this Agreement is intended to preclude leases of WMAT CAP Water for Irrigation Use.

**9.9** The Leased Water shall always be deemed to be held in trust for the benefit of the WMAT to which the lessee has acquired only a leasehold interest for the term of the lease.

**10.0 WMAT CAP WATER LEASE AGREEMENTS**

**10.1 CITIES' CAP WATER LEASE AGREEMENTS**

**10.1.1** Beginning thirty (30) days after the Enforceability Date, the WMAT shall lease to any or all of the Cities, and the Cities shall lease from the WMAT for a continuous term of one hundred (100) years: (1) one thousand two hundred eighteen (1,218) acre-feet per year of HVID CAP Water reallocated to the WMAT pursuant to Subparagraph 7.2.2; (2) seven thousand five hundred (7,500)

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acre-feet per year of CAP NIA Priority Water reallocated to the WMAT pursuant to Subparagraph 7.2.1 and that has been firmed pursuant to Subparagraph 7.17; and (3) thirteen thousand seven hundred eighty-two (13,782) acre-feet of CAP NIA Priority Water per year that was reallocated to the WMAT pursuant to Subparagraph 7.2.1, and which is not firmed pursuant to Subparagraph 7.17. The terms and conditions of the WMAT leases to the Cities referenced herein shall be in accordance with the City Lease Agreements attached as Exhibits 10.1.1A through 10.1.1H.

**10.1.1.1** The Leasing Cities, the City of Scottsdale, and CAWCD may assume a City Lease Agreement in accordance with the terms of the assignment and assumption agreements attached as Exhibits 10.1.1.1A and 10.1.1.1B. The City Lease Agreements shall bind the Cities to those provisions of each City's CAP Subcontract that are enumerated in the City Lease Agreement. The City Lease Agreements shall not obligate either the Cities or the WMAT to pay CAP capital repayment charges or any other charges, payments or fees, except as specifically provided in the City Lease Agreements. The Cities shall pay all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges to the CAP Operating Agency in accordance with the terms of the City Lease Agreements.

**10.1.1.2** Each of the Cities that elects to lease WMAT CAP Water in accordance with this Subparagraph 10.1 shall pay its Total Water Lease Charge amount to the WMAT pursuant to the terms and conditions of Paragraph 4.0 of the City Lease Agreements.

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- 10.1.2** The WMAT shall direct the Secretary to deliver the Leased Water in accordance with each City Lease Agreement.
- 10.1.3** The following shall occur if the WMAT, the State or a City imposes a tax on: (1) a City Lease Agreement or transactions or operations undertaken pursuant to a City Lease Agreement; (2) WMAT CAP Water; (3) the value of the Leased Water; or (4) the transportation of the Leased Water:
- 10.1.3.1** If the WMAT imposes such a tax on a City and such tax is lawfully owed by that City, that amount shall be paid by the WMAT to that City not less than thirty (30) days prior to the date that such tax amount is to be paid by that City to the WMAT;
- 10.1.3.2** If the State imposes such a tax on the WMAT and such tax is lawfully owed by the WMAT, that amount shall be paid by the Cities to the WMAT in proportion to the amount of WMAT CAP Water each City has leased not less than thirty (30) days prior to the date that such tax amount is to be paid by the WMAT to the State; and
- 10.1.3.3** If a City imposes such a tax on the WMAT and such tax is lawfully owed by the WMAT, that amount shall be paid by that City to the WMAT not less than thirty (30) days prior to the date that such tax amount is to be paid by the WMAT to that City.
- 10.1.4** The quantity of WMAT CAP Water initially made available for lease to each of the Leasing Cities is as set forth in the City Lease Agreements.

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**10.1.5** The Leased Water shall always be deemed to be held in trust for the benefit of the WMAT to which the Cities have acquired only a leasehold interest for the term of the City Lease Agreements.

**10.1.6** Subject to Subparagraph 16.4 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibits 10.1.1A through 10.1.1H and Exhibits 10.1.1.1A and 10.1.1.1B, the terms of Exhibits 10.1.1A through 10.1.1H and Exhibits 10.1.1.1A and 10.1.1.1B shall prevail as among the parties to such Exhibits.

**10.1.7** Notwithstanding any other provision of this Agreement, no Party shall challenge the validity or enforceability of Exhibits 10.1.1A through 10.1.1H or Exhibits 10.1.1.1A and 10.1.1.1B in any judicial, administrative or legislative proceeding.

## **10.2 CAWCD'S CAP WATER LEASE AGREEMENT**

**10.2.1** Beginning thirty (30) days after the Enforceability Date, the WMAT shall lease to the CAWCD, and the CAWCD shall lease from the WMAT for a continuous term of one hundred (100) years two thousand five hundred (2,500) acre-feet of CAP NIA Priority Water per year that was reallocated to the WMAT pursuant to Subparagraph 7.2.1, and which is not firmed pursuant to Subparagraph 7.17. The terms and conditions of the WMAT lease to the CAWCD referenced herein shall be in accordance with the CAWCD Lease Agreement attached as Exhibit 10.2.1.

**10.2.2** The WMAT shall direct the Secretary to deliver the Leased Water in accordance with the CAWCD Lease Agreement.

**10.2.3** The quantity of WMAT CAP Water initially made available for lease to CAWCD is as set forth in the Lease Agreement.

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**10.2.4** The Leased Water shall always be deemed to be held in trust for the benefit of the WMAT to which CAWCD has acquired only a leasehold interest for the term of the CAWCD Lease Agreement.

**10.2.5** Subject to Subparagraph 16.4 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibit 10.2.1, the terms of Exhibit 10.2.1 shall prevail as among the parties to the Exhibit.

**10.2.6** Notwithstanding any other provision of this Agreement, no Party shall challenge the validity or enforceability of Exhibit 10.2.1 in any judicial, administrative or legislative proceeding.

**11.0 MEASUREMENT AND CALCULATION OF DIVERSIONS AND OF DEPLETIONS OF WATER**

**11.1 DIVERSIONS**

**11.1.1** Except as provided in Subparagraph 11.3, the WMAT shall install and maintain devices capable of measuring and recording all Diversions of Water on the Reservation and on Off-Reservation Trust Land, or wherever WMAT CAP Water is used by the WMAT, other than livestock consumption and annual lake, stockpond or other impoundment Water Use. The accuracy of these measuring and recording devices shall be commensurate with measuring and recording devices and procedures used by SRP for similar purposes but the accuracy required shall not be more stringent than industry standards. At least annually for three (3) Years after the installation of the devices required pursuant to this Subparagraph 11.1, the WMAT shall retain a registered professional engineer or similarly qualified person to inspect, and, if necessary, correct the accuracy of the

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measuring and recording devices and procedures used by WMAT under this Subparagraph. After the third anniversary of the installation of the devices, inspections shall occur at least every three (3) years. Within thirty (30) days of the inspections, the WMAT or the United States acting in its capacity as trustee for the WMAT shall file in the Gila River Adjudication Proceeding or the Little Colorado River Adjudication Proceedings, as applicable determined by the location of the point of Diversion of Water to be measured by the particular device, a certified copy of the report by the registered professional engineer or similarly qualified person that sets forth the findings of the inspection and verification that the measuring and recording devices and procedures satisfy industry standards. At any time upon ten (10) days written notice, SRP may require an inspection by a registered professional engineer of any of the measuring devices required by this Subparagraph. If the results of the inspections show that a device's measurement accuracy is within industry standards, then SRP shall pay all costs incurred for the inspection of that device, otherwise WMAT shall bear such costs. If such measuring device is not within the industry standards for measurement accuracy, then the WMAT shall use due diligence, and in no event more than six (6) months to correct the operation of the non-conforming device in order to bring it into compliance with industry standards.

**11.1.2** WMAT shall also implement procedures to record and collect data concerning all such Diversions of Water.

## **11.2 REPORTING**

No later than March 1 of the second Year following the Year in which the Enforceability Date occurs, and on March 1 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the WMAT shall file in the Gila River Adjudication Proceedings and the Little Colorado River Adjudication Proceedings a report, in the form set forth as Exhibit 11.2 or as may otherwise be required by the Gila River Adjudication Court or the Little Colorado River Adjudication Court, showing: (1) all amounts of Water, by source, Diverted on the Reservation and on Off-Reservation Trust Land under Subparagraphs 5.0 and 6.0 in the Year immediately preceding the Year in which the report is filed; (2) all Depletions of Water, by source, measured or calculated as provided in Subparagraphs 11.3, 11.4 and 11.5; (3) all amounts of WMAT CAP Water delivered to others in exchange for the Diversion of Water on the Reservation and on Off-Reservation Trust Land by WMAT from sources located within the Salt River Watershed; (4) all amounts of WMAT CAP Water recharged; (5) all amounts of WMAT CAP Water leased to others; and (6) all amounts of WMAT CAP Water otherwise used by the WMAT. WMAT shall give notice by serving a copy of each such report to each Party as provided in Subparagraph 16.19 and as may otherwise be required by the Gila River Adjudication Court or the Little Colorado River Adjudication Court. The WMAT shall prepare and maintain such records as may be necessary to file and audit such reports. Any Party may petition the Gila River Adjudication Court or the Little Colorado River Adjudication Court to modify the form set forth in Exhibit 11.2 to ensure accurate reporting of the WMAT Water Diversions and Depletions. Any other Party may object to such petition.

**11.3 CALCULATION OF DIVERSIONS AND DEPLETIONS**

**11.3.1 LAKES, STOCKPONDS AND OTHER IMPOUNDMENTS**

**11.3.1.1** The inventories of all lakes, stockponds and other impoundments of Water on the Reservation and on Off-Reservation Trust Land existing as of the Enforceability Date are attached as Exhibits 11.3.1.1.A, 11.3.1.1.B, and 11.3.1.1.C. The inventories on Exhibits 11.3.1.1.A, 11.3.1.1.B, and 11.3.1.1.C shall be amended, as necessary, (1) to add or modify the description of any lakes, stockponds and other impoundments of Water enlarged or constructed on the Reservation after the Enforceability Date, and (2) to delete or modify the description of any lakes, stockponds and other impoundments of Water no longer physically and permanently capable of partially or completely impounding Water.

**11.3.1.2** Diversions and Depletions of Water resulting from the lakes, stockponds and other impoundments of Water on the Reservation and on Off-Reservation Trust Land shall be computed annually as provided in Exhibit 11.3.1.2. Release of Water stored in lakes, stockponds and other impoundments of Water shall be measured at the point of subsequent Diversion as set forth in Subparagraph 11.1, and subsequent Depletions associated with such Diversions shall be computed in accordance with the particular Use as set forth in Subparagraphs 11.3.2 through 11.3.8.

**11.3.1.3** Upon reasonable notice to the WMAT, representatives of SRP shall be authorized to visit each lake, stockpond and other impoundment of Water on the

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Reservation or Off-Reservation Trust Land for the purposes of verifying the surface area and capacity.

### **11.3.2 IRRIGATION**

**11.3.2.1** No later than December 1 of the Year following the Year in which the Enforceability Date occurs, the WMAT or the United States acting in its capacity as trustee for the WMAT shall identify all lands on the Reservation and on Off-Reservation Trust Land and prepare appropriate maps of all of such lands which have been irrigated at any time prior to January 1, 2007. The parcels of irrigated lands and ditches serving those parcels shall be accurately mapped at a scale of 1:12,000. Copies of these maps shall be provided to all Parties.

**11.3.2.2** No later than December 1 of each Year following the Year in which the Enforceability Date occurs, the WMAT or the United States acting in its capacity as trustee for the WMAT shall provide to each Party a written inventory of all irrigated lands on the Reservation and on Off-Reservation Trust Land irrigated at any time during the Year. The inventory shall include the number of acres irrigated by parcel, the acres of each crop grown on such parcel, the location of each parcel, the point of Diversion of all Water delivered to each parcel, the method of delivery of Water to each parcel, the distance from the point of Diversion to the turnout for the parcel, the method of irrigation of each parcel, the AFY of Water Diverted for each parcel, and the first and last dates of Diversion of Water for each parcel.

**11.3.2.3** Depletions of Water resulting from the irrigation of lands on the Reservation and on Off-Reservation Trust Land shall be computed annually as provided by Exhibit 11.3.2.3.

**11.3.3 MUNICIPAL AND INDUSTRIAL USES**

**11.3.3.1** No later than January 30 of the second Year following the Year in which the Enforceability Date occurs, and no later than January 30 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the WMAT shall provide to each Party a written report of all Diversions of Water on the Reservation and on Off-Reservation Trust Land for all M&I Uses of Water during the prior Year. The report shall include for each M&I Use the following: the point of Diversion, the place of Use and purpose of Use, the AFY Diverted, the method of Diversion, the amount of Effluent and method of treatment, if any, of such Effluent following its initial Use, and the amount and means of disposal of any Effluent from such treatment or Use.

**11.3.3.2** Depletions of Water used for M&I Uses on the Reservation and on Off-Reservation Trust Land shall be computed annually as provided by Exhibit 11.3.3.2.

**11.3.4 ARTIFICIAL SNOW MAKING**

**11.3.4.1** No later than January 30 of the second Year following the Year in which the Enforceability Date occurs, and no later than January 30 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the

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WMAT shall provide each Party a written report of all Diversions of Water on the Reservation and on Off-Reservation Trust Land for artificial snow making Uses during the prior Year. Reports shall include the point of Diversion and the AFY Diverted.

**11.3.4.2** Depletions of Water used for artificial snow making shall be computed annually as provided by Exhibit 11.3.4.2.

### **11.3.5 LIVESTOCK CONSUMPTION**

**11.3.5.1** The Diversions of Water on the Reservation and on Off-Reservation Trust Land for livestock consumption shall be deemed for the purposes of this Agreement, to be equal to the Depletions for such Uses.

**11.3.5.2** No later than January 30 of the second Year following the Year in which the Enforceability Date occurs, and no later than January 30 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the WMAT shall provide to each Party a written report estimating all Depletions of Water on the Reservation and on Off-Reservation Trust Land for livestock watering purposes. The report shall include an estimate of the greatest number of livestock on the Reservation and on Off-Reservation Trust Land during the prior Year and the methodology used in calculating the estimated Depletions of Water for this purpose.

**11.3.6 FISH HATCHERIES**

**11.3.6.1** No later than January 30 of the second Year following the Year in which the Enforceability Date occurs, and no later than January 30 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the WMAT shall provide each Party a written report of all Diversions of Water on the Reservation and on Off-Reservation Trust Land for fish hatchery Uses during the prior Year. The report shall include the point of Diversion for each such Use and the AFY Diverted for each hatchery Use.

**11.3.6.2** It shall be presumed that there will be no Depletions of Water used for fish hatchery purposes if all Diversions are returned to the source. If all Diversions are not returned to the source, the Depletions of such Uses shall be computed annually as provided in Subparagraph 11.3.3.2.

**11.3.7 MINING USES**

**11.3.7.1** No later than January 30 of the second Year following the Year in which the Enforceability Date occurs, and no later than January 30 of each Year thereafter, the WMAT or the United States acting in its capacity as trustee for the WMAT shall provide each Party a written report of all Diversions of Water on the Reservation and on Off-Reservation Trust land for all mining Uses of Water during the prior Year. The report shall include the point and method of Diversion, the place of Use, the AFY Diverted, the amount of Effluent and method of

treatment, if any, of such Effluent following its initial Use, and the amount and means of disposal of any Effluent following such treatment or Use.

**11.3.7.2** Depletions of Water used for mining purposes on the Reservation and on Off-Reservation Trust land shall be computed annually as provided by Exhibit 11.3.7.2.

**11.3.8 WMAT CAP WATER**

**11.3.8.1** All WMAT CAP Water leased to others in any Year shall be counted as a Diversion and Depletion by WMAT in such Year for the purposes of Paragraph 4.0 and Subparagraph 5.3 without regard to the quantity of water actually delivered under the terms of any such lease agreement.

**11.3.8.2** For WMAT CAP Water exchanged to others for Use by the WMAT, the Diversion of Water in any Year shall be the greater of: (1) the quantity of WMAT CAP Water delivered to an exchanging party in exchange for exchange credits to be utilized by the WMAT, or (2) the quantity of exchange credits Diverted for Use by the WMAT.

**11.3.8.3** For WMAT CAP Water exchanged to others for Use by the WMAT, the Depletion of Water in any Year shall be calculated as provided in Subparagraphs 11.3.1 through 11.3.7, inclusive, resulting from the Diversion of exchange credits for Use by the WMAT during such Year, plus any additional Depletions specified in the exchange agreement between the WMAT and the exchanging party.

- 11.3.8.4** All WMAT CAP Water used by the WMAT in any Year shall be counted as a Diversion and Depletion by the WMAT in such Year for the purpose of Paragraph 4.0 and Subparagraph 5.3.
- 11.4** Any reuse of Effluent or other return flows following the first Use of such Water on the Reservation and on Off-Reservation Trust Land shall be considered another separate Diversion for purposes of Paragraph 4.0 and Subparagraphs 5.1, 5.2, and 5.3. Depletions from such additional Diversions and Uses shall be computed in accordance with Subparagraph 11.3 and shall be considered separate Depletions for purposes of Paragraph 4.0 and Subparagraphs 5.1, 5.2 and 5.3.
- 11.5** Any Diversion of Water, the Use of which does not result in return flow to the Salt River or Little Colorado River Watershed from which it was Diverted shall be considered a Depletion for purposes of Paragraph 4.0 and Subparagraphs 5.1, 5.2, and 5.3.
- 11.6** In the event any Party believes the calculation of Diversions or Depletions as provided in Subparagraph 11.2 or 11.3 is no longer the most accurate measure of such Diversions or Depletions, such Party may request the other Parties to consider amending Subparagraphs 11.2 or 11.3 as applicable, including their Exhibits, to provide a more accurate measure of calculating such Diversions or Depletions. Any such requests shall include the proposed change in methodology for measuring Diversions or Depletions. In the event the Parties cannot agree on any such requested change, the requesting Party may petition the Gila River Adjudication Court and the Little Colorado River

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Adjudication Court to review the calculation of Diversions or Depletions as provided in Subparagraphs 11.2 or 11.3 and modify the calculation for future reports to the Courts.

11.7 Notwithstanding any other provisions of this Paragraph 11.0, the Diversion or Depletion of Water shall not be counted more than once for a single Use of Water.

**12.0 WAIVER AND RELEASE OF CLAIMS**

**12.1 WAIVER AND RELEASE OF CLAIMS BY PARTIES OTHER THAN THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS AND THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE WMAT AND ITS MEMBERS**

12.1.1 Except as provided in Subparagraph 12.5, the Parties, except the WMAT on behalf of itself and its Members and the United States acting in its capacity as trustee for the WMAT and its Members, shall execute a waiver and release of any claims against the WMAT and its Members and the United States acting in its capacity as trustee for the WMAT and its Members, under Federal, State or other law for all:

12.1.1.1 Past and present claims for Injury to Water Rights resulting from the Diversion or Use of Water on the Reservation and on Off-Reservation Trust Land arising from time immemorial through the Enforceability Date;

12.1.1.2 Claims for Injury to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on or for the Reservation and on Off-Reservation Trust Land in a manner not in violation of this Agreement;

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**12.1.1.3** Past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act.

**12.1.1.4** The waiver and release of claims described in Subparagraph 12.1 shall be in the form set forth in Exhibit 12.1 and shall become effective upon the Enforceability Date.

**12.2 WAIVER AND RELEASE OF CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS AND BY THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE WMAT AND ITS MEMBERS**

**12.2.1** Except for the specifically retained claims described in Subparagraph 12.6, the WMAT, on behalf of itself and its Members, and the United States, acting in its capacity as trustee for the WMAT and its Members, as part of the performance of the respective obligations of the United States and the WMAT under this Agreement, shall execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for all:

(a)(i) past, present, and future claims for Water Rights for the Reservation and Off-Reservation Trust Land arising from time immemorial and, thereafter, forever; and

(ii) past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors;

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- (b)(i) past and present claims for Injury to Water Rights for the Reservation and Off-Reservation Trust Land arising from time immemorial through the Enforceability Date;
- (ii) past, present, and future claims for Injury to Water Rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors; and
- (iii) claims for Injury to Water Rights arising after the Enforceability Date for the Reservation and Off-Reservation Trust Land resulting from Off-Reservation Diversion or Use of Water in a manner that is not in violation of this Agreement or State law; and
- (c) past, present, and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act.

**12.2.2** The waiver and release of claims described in Subparagraph 12.2.1 shall be in the form set forth in Exhibit 12.2 and shall become effective upon the Enforceability Date.

**12.3 WAIVER AND RELEASE OF CLAIMS BY THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS AGAINST THE UNITED STATES (EXCEPT IN THE CAPACITY OF THE UNITED STATES AS TRUSTEE FOR OTHER INDIAN TRIBES)**

**12.3.1** Except for the specifically retained claims described in Subparagraph 12.7, the WMAT, on behalf of itself and its Members, as part of the performance of the obligations of the WMAT under this Agreement, shall execute a waiver and release of any claim against the United States, including agencies, officials, or

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employees of the United States (except in the capacity of the United States as trustee for other Indian tribes), under Federal, State, or other law for any and all:

- (a)(i) past, present, and future claims for Water Rights for the Reservation and Off-Reservation Trust Land arising from time immemorial and, thereafter, forever; and
- (ii) past, present, and future claims for Water Rights arising from time immemorial and, thereafter, forever that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors;
- (b)(i) past and present claims relating in any manner to damages, losses, or injuries to Water, Water Rights, land, or other resources due to loss of Water or Water Rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of Water or Water Rights, claims relating to interference with, Diversion, or taking of Water, or claims relating to failure to protect, acquire, or develop Water, Water Rights, or Water infrastructure) within the Reservation and Off-Reservation Trust Land that first accrued at any time prior to the Enforceability Date;
- (ii) past, present, and future claims for Injury to Water Rights arising from time immemorial and, thereafter, forever that are based on aboriginal occupancy of land by the WMAT, its Members, or their predecessors; and
- (iii) claims for Injury to Water Rights arising after the Enforceability Date for the Reservation and Off-Reservation Trust Land resulting from the Off-

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Reservation Diversion or Use of Water in a manner that is not in violation of this Agreement or applicable law;

- (c) past, present, and future claims arising out of or relating in any manner to, the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act;
- (d) past and present claims relating in any manner to pending litigation of claims relating to the Water Rights of the WMAT for the Reservation and Off-Reservation Trust Land;
- (e) past and present claims relating to the operation, maintenance, and replacement of existing irrigation systems on the Reservation constructed prior to the Enforceability Date that first accrued at any time prior to the Enforceability Date, which waiver shall only become effective on the full appropriation and payment to the WMAT of \$4,950,000 of the amounts made available under Section 312(b)(2)(B) of the Act;
- (f) any claims relating to operation, maintenance, and replacement of the WMAT Rural Water System, which waiver shall only become effective on the date on which the funds are made available under Section 312(b)(3)(B) of the Act and deposited in the WMAT Maintenance Fund;
- (g) past and present breach of trust and negligence claims for damage to the land and natural resources of the WMAT caused by riparian and other vegetative manipulation by the United States for the purpose of increasing Water runoff from the Reservation that first accrued at any time prior to the Enforceability Date; and

- (h) past and present claims for trespass, use, and occupancy of the Reservation in, on, and along the Black River that first accrued at any time prior to the Enforceability Date.

**12.3.2** The waiver and release of claims described in Subparagraph 12.3.1 shall be in the form set forth in Exhibit 12.3, and, except where otherwise specifically provided in 12.3.1(e) and 12.3.1(f), shall become effective upon the Enforceability Date.

**12.4 WAIVER AND RELEASE OF CLAIMS BY THE UNITED STATES IN ALL CAPACITIES (EXCEPT AS TRUSTEE FOR AN INDIAN TRIBE OTHER THAN THE WMAT) AGAINST THE WMAT AND ITS MEMBERS**

**12.4.1** Except for the specifically retained claims described in Paragraph 12.8, the United States, in all capacities (except as trustee for an Indian tribe other than the WMAT), as part of the performance of its obligations under this Agreement, shall execute a waiver and release of any and all claims against the WMAT, its Members, or any agency, official, or employee of the WMAT, under Federal, State or any other law for all:

- (a) past and present claims for Injury to Water Rights resulting from the Diversion or Use of Water on the Reservation and on Off- Reservation Trust Land arising from time immemorial through the Enforceability Date;
- (b) claims for Injury to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on the Reservation and on Off-Reservation Trust Land in a manner that is not in violation of this Agreement; and

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- (c) past, present, and future claims arising out of or related in any manner to, the negotiation, execution, or adoption of this Agreement, an applicable settlement judgment or decree, or the Act.

**12.4.2** The waiver and release of claims described in Subparagraph 12.4.1 shall be in the form set forth in Exhibit 12.4 and shall become effective upon the Enforceability Date.

**12.5 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY THE PARTIES OTHER THAN THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS OR THE UNITED STATES ACTING AS TRUSTEE FOR THE WMAT AND ITS MEMBERS**

**12.5.1** Notwithstanding the waiver and release of claims described in Subparagraph 12.1 and Exhibit 12.1, the Parties, other than the WMAT on behalf of itself and its Members and the United States acting in its capacity as trustee for the WMAT and its Members, shall retain any right to:

**12.5.1.1** Subject to Subparagraph 16.9, assert claims for injuries to, and seek enforcement of, their rights under this Agreement or the Act in any State court or Federal court of competent jurisdiction;

**12.5.1.2** Assert claims for injuries to, and seek enforcement of, their rights under the Judgment and Decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached hereto as Exhibit 12.9.6.1;

**12.5.1.3** Assert claims for injuries to, and seek enforcement of, their rights under the Judgment and Decree entered by the court in the Little Colorado River Adjudication Proceedings, the form of which is attached hereto as Exhibit 12.9.6.2;

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**12.5.1.4** Assert past, present, and future claims to Surface Water that are not inconsistent with this Agreement;

**12.5.1.5** Assert any claims to Groundwater that are subject to the Gila River Adjudication Proceedings or the Little Colorado River Adjudication Proceedings, or other applicable law;

**12.5.1.6** Assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived herein;

**12.6 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS AND THE UNITED STATES ACTING AS TRUSTEE FOR THE WMAT AND ITS MEMBERS**

**12.6.1** Notwithstanding the waiver and release of claims set forth in Subparagraph 12.2, the WMAT, on behalf of itself and its Members, and the United States, acting as trustee for the WMAT and its Members, shall retain any right:

- (a) subject to Subparagraph 16.9, to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and its Members under this Agreement or the Act in any Federal or State court of competent jurisdiction;
- (b) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT under the Judgment and Decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.1;
- (c) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT under the Judgment and Decree entered by the court in the Little

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Colorado River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.2;

- (d) to object to any claims by or for any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;
- (e) to participate in the Gila River Adjudication Proceedings and the Little Colorado River Adjudication Proceedings to the extent provided in Subparagraph 14.1;
- (f) to assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived in Subparagraph 12.2;
- (g) to assert any past, present, or future claim for Injury to Water Rights against any other Indian tribe, Indian community or nation, dependent Indian community, allottee, or the United States on behalf of such a tribe, community, nation or allottee;
- (h) to assert any past, present, or future claim for trespass, use, and occupancy of the Reservation in, on, or along the Black River against Freeport-McMoran Copper & Gold, Inc., Phelps Dodge Corporation, or Phelps Dodge Morenci, Inc., (or a predecessor or successor of those entities), including all subsidiaries and affiliates of those entities; and
- (i) to assert claims arising after the Enforceability Date for Injury to Water Rights resulting from the pumping of Water from land located within national forest land as of January 13, 2009 in the south ½ of T. 9 N., R. 24 E., the south ½ of T. 9 N., R. 25 E., the north ½ of T. 8 N., R. 24 E., or the

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north ½ of T.8 N., R. 25 E., if Water from that land is used on the land or is transported off the land for municipal, commercial, or industrial Use.

**12.7 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS AGAINST THE UNITED STATES**

**12.7.1** Notwithstanding the waiver and release of claims set forth in Subparagraph 12.3, the WMAT, on behalf of itself and its Members, shall retain any right:

- (a) subject to Subparagraph 16.9, to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and its Members under this Agreement or the Act in any Federal or State court of competent jurisdiction;
- (b) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and Members under the Judgment and Decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.1;
- (c) to assert claims for injuries to, and seek enforcement of, the rights of the WMAT and Members under the Judgment and Decree entered by the court in the Little Colorado River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.2;
- (d) to object to any claims by or for any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;
- (e) to assert past, present or future claims for Injury to Water Rights, or any other claims other than a claim to Water Rights, against any other Indian

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tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

- (f) to assert claims arising after the Enforceability Date for Injury to Water Rights resulting from the pumping of Water from land located within national forest land as of January 13, 2009 in the south ½ of T. 9 N., R. 24 E., the south ½ of T. 9 N., R. 25 E., the north ½ of T. 8 N., R. 24 E., or the north ½ of T.8 N., R. 25 E., if Water from that land is used on the land or is transported off the land for municipal, commercial, or industrial Use;
- (g) to assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived in Subparagraph 12.3;
- (h) to seek remedies and assert any other claims not specifically waived in Subparagraph 12.3; and
- (i) to assert any claim arising after the Enforceability Date for a future taking by the United States of Reservation land, Off-Reservation Trust Land, or any property rights appurtenant to that land, including any Water Rights set forth in Paragraph 4.0.

## **12.8 UNITED STATES' RESERVATION OF RIGHTS AND RETENTION OF CLAIMS**

**12.8.1** Notwithstanding the waiver and release of claims described in Subparagraph 12.4, the United States shall retain any right to assert any claims not specifically waived in Subparagraph 12.4.

**12.9 GENERAL**

**12.9.1** Except as provided in Subparagraphs 4.14, 12.2.1(a)(ii), 12.2.1(b)(ii), 12.3.1(a)(ii) and 12.3.1(b)(ii), nothing in the Act or this Agreement shall affect any rights to Water of the WMAT, its Members, or the United States acting in its capacity as trustee for the WMAT and its Members, for land outside the boundaries of the Reservation or Off-Reservation Trust Land.

**12.9.2** Beginning on the Enforceability Date all land held by the United States in trust for the WMAT and its Members shall have no rights to Water other than those specifically quantified for the WMAT and the United States, acting in its capacity as trustee for the WMAT and its Members, for the Reservation and Off-Reservation Trust Land pursuant to Paragraph 4.0. Except as set forth in this Agreement, the benefits realized by the WMAT and its Members under this Agreement and the Act shall be in full satisfaction of all claims of the WMAT, its Members and the United States acting as trustee for benefit of the WMAT and its Members, for Water Rights and Injury to Water Rights, under Federal, State, or other law with respect to the Reservation and Off-Reservation Trust Land. Notwithstanding the preceding sentence, nothing in this Agreement or the Act recognizes or establishes any right of a Member to Water on the Reservation or on Off-Reservation Trust Land.

**12.9.3** Any entitlement to Water of the WMAT or its Members or the United States acting in its capacity as trustee for the WMAT and its Members for the Reservation and Off-Reservation Trust Land shall be satisfied out of the Water

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resources granted, quantified, confirmed or recognized to or for the WMAT and the United States acting in its capacity as trustee for the WMAT by this Agreement and the Act.

**12.9.4** Except as provided in Subparagraph 12.6.1(i) and 12.7.1(f), the WMAT and the United States acting in its capacity as trustee for the WMAT shall not: (1) object to the use of any well located outside the boundaries of the Reservation or the Off-Reservation Trust Land in existence on the Enforceability Date; or (2) object to, dispute or challenge after the Enforceability Date the drilling of any well or the withdrawal and Use of Water from any well in the Little Colorado River Adjudication Proceedings, the Gila River Adjudication Proceedings or in any other judicial or administrative proceeding.

**12.9.5** Nothing in this Agreement or the Act affects any right of the United States to take any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety, or the environment.

**12.9.6 FORMS OF JUDGMENT**

**12.9.6.1** The Parties that are parties to the Gila River Adjudication Proceedings shall file and seek approval of a Judgment and Decree in the Gila River Adjudication Proceedings substantially in the form of Exhibit 12.9.6.1.

**12.9.6.2** The Parties that are parties to the Little Colorado River Adjudication Proceedings shall file and seek approval of a Judgment and Decree in the Little

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Colorado River Adjudication Proceedings substantially in the form of Exhibit  
12.9.6.2.

**12.9.7** Nothing in this Agreement or the Act expands, diminishes, or impacts any claims the WMAT may assert, or any defense the United States may assert, concerning title to land outside the most current survey, as of December 8, 2010, of the northern boundary of the Reservation.

**13.0 FEDERAL APPROPRIATIONS AND LOCAL CONTRIBUTIONS**

**13.1** The Parties, excluding the United States, agree to use their good faith efforts to support the appropriations authorized in Sections 312(b)(2) and 312(e)(2)(B) of the Act. The Parties, excluding the United States, agree to establish a communication process for notifying the Parties when the WMAT requests legislative support. The Parties, excluding the United States, agree to support implementation of this Agreement and the Act by including WMAT Congressional legislation in the legislative agendas approved by their governing bodies or other means as appropriate.

**13.2** A combination of funding will be made available and deposited as provided in the Act.

**13.3** The State of Arizona shall provide \$2 million for the implementation of this Agreement, which in accordance with Section 310(a)(2) of the Act will be deposited into the WMAT Water Rights Settlement Subaccount established by Section 310(a) of the Act.

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**13.4** Enforceability of this Agreement is conditioned upon the satisfaction of all of the conditions set forth in Section 309(d)(1) of the Act, including the deposit of the State's contribution of funds as provided in Section 309(d)(1)(D) of the Act and Subparagraph 13.3 and the deposit of Federal funds into the White Mountain Apache Water Rights Settlement Subaccount as provided in Section 312(a) of the Act.

**13.5** Neither the Federal funds authorized, appropriated, or transferred in or under the Act, nor any contribution pursuant to this Paragraph, nor any interest or income accruing on the principal of the Federal or contributed funds, shall be distributed to any Member on a per capita basis.

**14.0 CONFIRMATION OF RIGHTS**

**14.1** Status of WMATs' claims:

**14.1.1** The WMAT agrees to intervene in the Gila River Adjudication Proceedings for at least the limited purposes of seeking the court's approval of the Judgment and Decree, pursuant to the Arizona Supreme Court's May 16, 1991, Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes, substantially in the form of Exhibit 12.9.6.1, and to the court's continuing jurisdiction for enforcement purposes. The WMAT agrees to intervene in the Little Colorado Adjudication Proceedings for at least the limited purposes of seeking the court's approval of the Judgment and Decree, pursuant to the Arizona Supreme Court's September 27, 2000,

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Administrative Order, substantially in the form of Exhibit 12.9.6.2, and to the court's continuing jurisdiction for enforcement purposes.

**14.1.2** The Parties, including the United States in all its capacities except as trustee for Indian tribes other than the WMAT, ratify, confirm, declare to be valid, and shall not object to, dispute or challenge in the Gila River Adjudication Proceedings or in the Little Colorado River Adjudication Proceedings, or in any other judicial or administrative proceeding, the rights of the WMAT and the United States acting in its capacity as trustee for the WMAT to the Water Rights or to the Use of Water, quantified in this Agreement and in the Act.

**14.1.3** Except as provided in Subparagraphs 12.6.1 and 14.1.4, the WMAT and the United States acting in its capacity as trustee for the WMAT shall neither challenge nor object to claims of other persons for the Use of Water from the Salt River and the Little Colorado River and their tributaries in the Gila River Adjudication Proceedings, the Little Colorado River Adjudication Proceedings or in any other judicial or administrative proceedings.

**14.1.4** The WMAT and the United States acting in its capacity as trustee for the WMAT reserve and retain the right to challenge or object to any claim for Use of Water by or on behalf of the following persons or entities:

**14.1.4.1** The Gila River Indian Community of the Gila River Indian Reservation,  
Arizona;

**14.1.4.2** The Tonto Apache Tribe of Arizona;

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**14.1.4.3** The San Carlos Apache Tribe of the San Carlos Reservation, Arizona;

**14.1.4.4** The Salt River Pima-Maricopa Indian Community of the Salt River  
Reservation, Arizona;

**14.1.4.5** Freeport-McMoRan Copper & Gold, Inc., Phelps Dodge Corporation,  
Phelps Dodge Morenci, Inc., their predecessors and successors, including all  
subsidiaries and affiliates;

**14.1.4.6** Such persons or entities responsible for Injury to Water Rights arising after  
the Enforceability Date resulting from the drilling of wells or pumping of Water  
from lands located within national forest lands as of the date of this Agreement in  
the south half of T. 9 N., R. 24 E.; south half of T. 9 N., R. 25 E., north half of T.  
8 N., R. 24 E.; north half of T. 8 N., R. 25 E., in the event title to such lands is no  
longer retained by the United States or Water from such lands is transported off  
such lands for M&I Use.

## **14.2 SRP RIGHTS**

**14.2.1** All of the Parties, including the United States in all of its capacities except as  
trustee for Indian tribes other than the WMAT, ratify, confirm, declare to be valid,  
and agree not to object to, dispute, or challenge in the Gila River Adjudication  
Proceedings, or in any other judicial or administrative proceeding, the rights of  
SRP and its shareholders to the Waters of the Salt and Verde rivers, which rights

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are appurtenant to the lands of SRP and its shareholders, and are described, stated, confirmed or established in the following documents:

**14.2.1.1** Notices of Appropriation of Water posted and subsequently recorded by the Hudson Reservoir and Canal Company on April 22, 1893, with the Gila County, Arizona, Recorder's Office in Book of Miscellaneous Records No. 1 at Pages 478 to 480; on April 25, 1893, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 1 at Pages 283-285; on April 29, 1893, with the Yuma County, Arizona, Recorder's Office in Book of Homestead and Pre-emption Claims No. 1 at Pages 76-78; on May 1, 1893, with the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 1 at Pages 8-13; on August 26, 1893, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 1 at Pages 310-312; on August 26, 1893, with the Gila County, Arizona, Recorder's Office in Book of Miscellaneous Records, No. 1 at Pages 534-538; on February 1, 1894, with the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 1 at Pages 53-57; on August 30, 1901, with the Gila County, Arizona, Recorder's Office in Book of Miscellaneous Records No. 2 at Pages 292-293; on August 31, 1901, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at Pages 74-76; on August 31, 1901, with the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 2 at Pages 191-195; on August 31, 1901, in the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 2 at Pages 239-242; on February 26, 1900, in the Office of the Secretary of the Arizona Territory in Book of Filings and

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Locations No. 2 at Pages 131-133; on March 3, 1900, in the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 2 at Pages 154-157.

**14.2.1.2** Notice of Appropriation of Water posted and recorded by Frank H. Parker, Secretary of the Salt River Valley Water Users' Association, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 155 on February 8, 1906.

**14.2.1.3** Notice of Appropriation of Water posted on February 6, 1906 and recorded by Louis C. Hill, Supervising Engineer, United States Geological Survey, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 156 on February 8, 1906.

**14.2.1.4** Notice of Appropriation of Water posted on March 4, 1914, and recorded by John P. Orme, President of the Salt River Valley Water Users' Association, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 379 on March 6, 1914.

**14.2.1.5** Decision and Decree, and all Decrees supplemental thereto, entered in *Hurley v. Abbott*, in the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Maricopa, No. 4564, March 1, 1910.

**14.2.1.6** Decision and Decree, and all supplemental Decrees thereto, entered in *Benson v. Allison*, in the Superior Court of Maricopa County, State of Arizona,

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No. 7589, November 14, 1917, solely as applied to the Northeast ¼ of Section 25, Township 1 North, Range 1 East, G&SRB&M.

**14.2.1.7** Salt River Valley Water Users' Association Articles of Incorporation, as amended, in existence on the Enforceability Date.

**14.2.1.8** Water right applications approved and accepted by the authority of the Secretary of the Interior for homestead lands under the Reclamation Act and for Lands in Private Ownership and Lands Other than Homesteads under the Reclamation Act between the United States of America, Department of Interior, Bureau of Reclamation and individual shareholders of the Salt River Valley Water Users' Association.

**14.2.1.9** Agreement between the United States of America and the Salt River Valley Water Users' Association, dated June 25, 1904.

**14.2.1.10** Contract between the United States of America and Salt River Valley Water Users' Association dated September 6, 1917, as amended on July 26, 1922, April 25, 1928, June 30, 1930, November 29, 1930, September 10, 1941, and June 30, 1950.

**14.2.1.11** Contract between the United States of America and Salt River Valley Water Users' Association, dated June 3, 1935 (Verde River Storage Works).

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**14.2.1.12** Contract between the United States of America and Salt River Valley Water Users' Association, dated November 26, 1935, as amended on October 14, 1936, October 2, 1939, and September 10, 1941 (Construction of Bartlett Dam).

**14.2.1.13** Contract between Salt River Valley Water Users' Association and Salt River Project Agricultural Improvement and Power District, dated March 22, 1937, as amended on February 28, 1944, and September 12, 1949.

**14.2.1.14** Agreement between Salt River Valley Water Users' Association, Phelps Dodge Corporation and Defense Plant Corporation, dated March 1, 1944 (Horseshoe Dam Construction and Operation).

**14.2.2** All of the Parties, including the United States in its capacity as trustee for the WMAT, agree not to object to, dispute or challenge in the Little Colorado River Adjudication Proceedings, or in any other judicial or administrative proceeding, the right of SRP to withdraw up to 21,000 AFY of Underground Water for Use at the Coronado Generating Station, located in Apache County, Arizona.

### **14.3 BUCKEYE RIGHTS**

**14.3.1** All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, ratify, confirm, declare to be valid, and agree not to object to, dispute, or challenge in the Gila River Adjudication Proceedings, or in any other judicial or administrative proceeding, the rights of the Buckeye Water Conservation & Drainage District, and the Buckeye Irrigation Company and its shareholders, to the Waters of the Salt, Verde and Gila rivers,

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which rights are appurtenant to lands currently provided with Water by the Buckeye Irrigation Company or within Buckeye Water Conservation & Drainage District, and which rights are described, confirmed, or established by virtue of the following documents, decrees and enactments:

**14.3.1.1** Notices of location and appropriation of waters of the Gila River posted March 10, 1877, and recorded March 12, 1877, in Book 1 of Canals, page 22, and posted May 28, 1885, and recorded June 3, 1885, in Book 1 of Canals, Page 80, and posted July 24, 1886, and recorded October 8, 1886, in Book 1 of Canals, page 94, in the records of Maricopa County, Arizona.

**14.3.1.2** The Articles of Incorporation and Bylaws of the Buckeye Irrigation Company, as amended and in effect as of the Enforceability Date.

**14.3.1.3** The decree of November 14, 1917, and all amendments and supplements thereto, entered in *Benson v. Allison, et al.*, No. 7589 in the Superior Court of Maricopa County, Arizona, as applicable to all lands described therein and now provided with Water diverted from the Gila River at the head gate of the Buckeye Canal in Section 28, Twp. 1 N., R. 1 W., G&SRB&M, Maricopa County, Arizona.

**14.3.1.4** The order of the Board of Supervisors of Maricopa County, Arizona, dated November 6, 1922, creating the Buckeye Water Conservation & Drainage District and including specified lands within the boundaries thereof, and the provisions of Chapter 19, Title 48, Arizona Revised Statutes, establishing the rights of lands to

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Waters available for distribution within such District as in effect at the time of the Enforceability Date.

**14.3.1.5** The stipulations, judgments and decrees made and entered in *Buckeye Irrigation Company v. Salt River Valley Water Users' Association, et al.*, No. 30869-B in the Superior Court of Maricopa County, Arizona, including, but not limited to the judgment in favor of Buckeye Irrigation Company and against Salt River Valley Water Users' Association entered September 29, 1944.

#### **14.4 CITY OF PHOENIX RIGHTS**

**14.4.1** All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or otherwise, the rights of the City of Phoenix in the Waters of the Salt and Verde rivers, which rights are described, stated, confirmed or established in the following documents:

**14.4.1.1** Contract No. 1830 between the United States of America, the City of Phoenix and the Salt River Valley Water Users' Association dated October 7, 1948.

**14.4.1.2** Contract No. 1604 between the Salt River Valley Water Users' Association and the City of Phoenix dated November 22, 1946, to the extent that Contract No. 1604 is in accordance with and consistent with Contract No. 1830 described in Subparagraph 14.4.1.1.

**14.4.1.3** Certificate of Water Right No. 1999 from the State of Arizona to the City of Phoenix.

**14.5 PLAN 6 BUREAU OF RECLAMATION STORAGE AND APPROPRIATIVE RIGHTS**

**14.5.1 MODIFIED ROOSEVELT DAM**

All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or otherwise, the rights of the United States in the Waters of the Salt River, which rights are described, stated, confirmed or established in Permit to Appropriate Surface Waters of the State of Arizona No. R-2128 issued by the State of Arizona to the U.S. Bureau of Reclamation.

**14.5.2 NEW WADDELL DAM**

All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or otherwise, the rights of the United States in the Waters of the Agua Fria River, which rights are described, stated, confirmed or established in Permit to Appropriate Surface Waters of the State of Arizona No. 33-87832 issued by the State of Arizona to the U.S. Bureau of Reclamation.

## **14.6 PLAN 6 STATE APPROPRIATIVE RIGHTS**

### **14.6.1 MODIFIED ROOSEVELT DAM**

All of the Parties, including the United States in all of its capacities except as trustee on behalf of any Indian tribe other than the WMAT, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or otherwise, the rights of the cities of Phoenix, Scottsdale, Mesa, Chandler, Glendale and Tempe in the Waters of the Salt River, which rights are described, stated, confirmed or established in the following documents:

**14.6.1.1** Permit to Appropriate Surface Waters of the State of Arizona No. 33-96226  
issued by the State of Arizona to the City of Tempe;

**14.6.1.2** Permit to Appropriate Surface Waters of the State of Arizona No. 33-96227  
issued by the State of Arizona to the City of Scottsdale;

**14.6.1.3** Permit to Appropriate Surface Waters of the State of Arizona No. 33-96228  
issued by the State of Arizona to the City of Phoenix;

**14.6.1.4** Permit to Appropriate Surface Waters of the State of Arizona No. 33-96229  
issued by the State of Arizona to the City of Mesa;

**14.6.1.5** Permit to Appropriate Surface Waters of the State of Arizona No. 33-96230  
issued by the State of Arizona to the City of Glendale; and

**14.6.1.6** Permit to Appropriate Surface Waters of the State of Arizona No. 33-96231  
issued by the State of Arizona to the City of Chandler.

**14.6.2 NEW WADDELL DAM**

All of the Parties, including the United States in all of its capacities except as trustee on behalf of any Indian tribe other than WMAT, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge in the Gila River Adjudication Proceedings, or otherwise, the rights of CAWCD in the Waters of the Agua Fria River, which rights are described, stated, confirmed or established in Permit to Appropriate Surface Waters of the State of Arizona No. 33-89719 issued by the State of Arizona to the CAWCD.

**14.7 RWCD RIGHTS**

**14.7.1** All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, ratify, confirm and declare to be valid the rights of RWCD under and as defined in that agreement between the Salt River Valley Water Users' Association and RWCD dated October 24, 1924, and approved by the Secretary on December 2, 1924, and all amendments and modifications thereto as of the Enforceability Date. All of the Parties, including the United States in all of its capacities except for the United States acting as trustee for Indian tribes other than the WMAT, recognize and confirm the entitlement of RWCD to Surface Water from the Salt and Verde River systems and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or in any other judicial or administrative proceeding, such rights, which rights are evidenced by, described, stated, confirmed or established in the following documents and instruments: the agreement between the Salt River Valley Water Users' Association and RWCD dated October 24, 1924, and

*Dated as of November 1, 2012*

approved by the Secretary on December 2, 1924; the stipulation dated September 18, 1940, the decision dated on or about September 18, 1940, the judgment dated September 19, 1940, and the order dated September 19, 1940, in *W.C. Lehane v. Salt River Valley Water Users' Association, et al.*, Cause No. 32021-C in the Superior Court of Maricopa County, Arizona; and the agreement between SRP and RWCD dated September 9, 1954.

**14.7.2** All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, recognize and confirm that the measure of RWCD's Surface Water entitlement under the documents and instruments identified in Subparagraph 14.7.1 is five and six-tenths percent (5.6%) of the sum of all Surface Water, except Spill Water, diverted at Granite Reef Dam or other points on the Salt and Verde Rivers (a) for Use on the lands within the SRRD described in Exhibit 14.7.2, (b) for distribution by Glendale, Mesa, Phoenix, Tempe, and Chandler, or other cities, or towns, or their successors, to the lands within the SRRD listed on Exhibit 14.7.2, and (c) all Surface Water delivered to SRP below Granite Reef Dam for Use on the lands within the SRRD listed on Exhibit 14.7.2 in exchange for Surface Water that otherwise would have been diverted at Granite Reef Dam for delivery to such lands; minus the first 19,427 acre-feet of Surface Water delivered by SRP each year to the City of Phoenix domestic water treatment plants. Except as provided in this Subparagraph 14.7.2, all rights and obligations contained in the documents and instruments referred to in Subparagraph 14.7.1 hereof shall remain in full force and effect. RWCD's entitlement as set forth in this Subparagraph 14.7 shall

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not include any yield from additional active conservation capacity (increases in reservoir capacity assigned to regulate reservoir outflow for irrigation, power and municipal and industrial use which result from modifications of Roosevelt Dam) in Plan 6 facilities (Plan 6 for the regulatory storage division of the CAP, which, for purposes of this Subparagraph 14.7.2 is limited to modifications to Roosevelt Dam on the Salt River).

**14.7.3** All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, acknowledge that RWCD's Water Rights as described in the documents and instruments referred to in Subparagraph 14.7.1 hereof are appropriative rights and are appurtenant to RWCD lands. Should any other entity succeed to all of RWCD's Water entitlement and system capacity, it shall assume RWCD's rights and obligations to the WMAT and SRP under this Agreement. Nothing in this Agreement shall be construed as a grant of rights between SRP and RWCD for the use of SRP facilities to deliver RWCD's entitlement.

**14.7.4** "Spill Water" for purposes of Subparagraph 14.7.2, shall mean flood flow waters from the Salt and Verde Rivers in excess of the storage capacity of SRP reservoirs as such reservoirs existed on February 12, 1988.

## **15.0 WMAT WATER CODE**

**15.1** The WMAT shall have the right to allocate Water to all users on the Reservation and on Off-Reservation Trust Lands pursuant to the Water Code and to manage, regulate

*Dated as of November 1, 2012*

and control the Use on the Reservation and on Off-Reservation Trust Land, of all of the Water Rights quantified to the WMAT by this Agreement.

**15.2** No later than eighteen (18) months following the Enforceability Date, the WMAT shall have enacted a Water Code governing all of the Water Rights quantified to the WMAT by this Agreement. The Water Code shall include, at a minimum, the following provisions:

- 15.2.1** Provisions requiring the measurement, calculation and recordation of all Divisions and Depletions of Water on the Reservation and on Off-Reservation Trust Land.
- 15.2.2** Terms of a water conservation plan, including objectives, conservation measures and an implementation timeline, as provided in Section 305(e)(2)(B) of the Act.
- 15.2.3** Provisions requiring the approval of the WMAT for the severance and transfer of rights to the Use of Water from historically irrigated lands identified in accordance with Subparagraph 11.3.2.1 to Divisions and Depletions on other non-historically irrigated lands not located on the watershed of the same Water source.
- 15.2.4** Provisions requiring the authorization of the WMAT for all Divisions of Water on the Reservation and on Off-Reservation Trust Land by any individual or entity other than the WMAT.

**16.0 OTHER PROVISIONS**

**16.1 RECLAMATION REFORM ACT**

Pursuant to Section 311(d) of the Act, the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390aa, et seq.) and any other acreage limitation or full cost pricing provision under Federal law shall not apply to any individual, entity or land solely on the basis of: (A) receipt of any benefit under the Act, (B) execution or performance of this Agreement, or (C) the Use, storage, delivery, lease, or exchange of CAP Water.

**16.2 NO STANDARD FOR USE FOR QUANTIFICATION OF OTHER INDIAN RIGHTS OR CLAIMS**

Nothing in this Agreement shall be construed as establishing any standard to be used for the quantification of Federal reserved rights, aboriginal claims, or any other Indian claims to Water in any judicial or administrative proceeding.

**16.3 ENTIRE UNDERSTANDING**

This Agreement constitutes the entire understanding among the Parties. Evidence of conduct or statements made in the course of negotiating this Agreement, including, but not limited to previous drafts of this Agreement, is inadmissible in any legal proceedings other than one for approval or confirmation of this Agreement.

**16.4 MODIFICATIONS TO AGREEMENT AND AMENDMENTS TO EXHIBITS**

No modification of this Agreement shall be effective unless it is in writing, signed by all Parties, and is approved by the Gila River Adjudication Court or the Little Colorado River Adjudication Court, as applicable. Notwithstanding the foregoing, Exhibits to this Agreement may be amended by the parties to such Exhibits in accordance

*Dated as of November 1, 2012*

with their terms, without court approval, unless such approval is required in the Exhibit or by law; provided, however, that no amendment of any Exhibit may violate any provisions of the Act, or this Agreement, or adversely affect the rights under this Agreement of any Party who is not a signatory of such an amendment.

#### **16.5 STATE CAPACITY**

Execution of this Agreement by the Governor of the State constitutes the commitment of the State to carry out the terms and conditions of Subparagraphs 7.17, 12.1, and 16.6. Except as provided in the preceding sentence, it is not intended that this Agreement shall be determinative of any decision to be made by any State agency in any administrative, adjudicatory, rule making, or other proceeding or matter. The State's participation as a Party shall be as described herein and shall not bind the State as to a waiver of rights or release of claims, if any, for lands received by the State from the United States pursuant to the provisions of:

- (a) The Act of September 9, 1850, 9 Stat. 446 (creating the Territory of New Mexico);
- (b) The December 30, 1853 Treaty with Mexico, 10 Stat. 1031 (the Gadsden Purchase);
- (c) The Act of 1863, 12 Stat. 664 (creating the Territory of Arizona);
- (d) The Act of February 18, 1881, 21 Stat. 326 (University of Arizona 1881 Grant);
- (e) The Arizona-New Mexico Enabling Act of June 20, 1910, 36 Stat. 557; and
- (f) The Act of February 20, 1929, c. 280, § 2, 45 Stat. 1252 (land for miners' hospitals for disabled miners within said State).

*Dated as of November 1, 2012*

**16.6 OBLIGATION TO WORK IN GOOD FAITH TO ACHIEVE ENFORCEABILITY OF AGREEMENT**

As of December 31, 2008, each Party shall have the obligation to work in good faith to satisfy the conditions set forth in Section 309(d) of the Act. Except as provided in the preceding sentence, no Party, by reason of its execution of this Agreement, shall be required to perform any of the obligations or be entitled to receive any of the benefits under this Agreement until the Enforceability Date.

**16.7 AUTHORITY TO EXECUTE**

Each Party represents that the person signing this Agreement on behalf of such Party has the authority to execute it.

**16.8 CHANGES IN USES ON SRRD AND RWCD LANDS**

All of the Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, recognize that Water Uses on the urbanized portions of the lands within SRRD and RWCD have changed and will continue to change from agricultural Uses to M&I Uses. The Parties including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT agree that such changes in Use are valid, and that Water appurtenant to lands that are now or will become urbanized within a particular municipal or other water service area may be delivered for M&I Uses on such urbanized lands and the Water Rights appurtenant to such urbanized lands shall carry the original priority dates. With the exception of type of Use, these Water Rights are as described in the Kent Decree, the Lehane decision (*W.C. Lehane v. Salt River Valley Water Users' Assoc., et al.*, Cause No. 32021-C) and the

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documents referred to therein. No Party, including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT, shall challenge or otherwise object to these rights on the basis of change of Use, nature of delivery, or on any other bases in any judicial or administrative proceeding. As to urbanized lands within the SRRD, the Parties including the United States in all of its capacities except as trustee for Indian tribes other than the WMAT agree that the historical practices of the cities and towns located within the geographic limits of SRRD and SRP and the general nature of the rights are appropriately described in the Water Commissioner's Report of June 3, 1977, a copy of which is attached as Exhibit 16.8. Nothing in this Subparagraph 16.8 shall be construed as authorizing the delivery of Water to any municipality by SRP or RWCD for M&I Uses within the SRRD or RWCD, respectively, in the absence of a written delivery agreement between any such municipality and SRP or RWCD.

**16.9 RIGHT TO PETITION ANY COURT OF COMPETENT JURISDICTION**

Any Party shall have the right to petition any State court or Federal court of competent jurisdiction for such declaratory and injunctive relief as may be necessary to enforce the terms, conditions, and limitations of this Agreement. Nothing contained herein waives the right of the United States or the WMAT to object to the jurisdiction of the courts of the State to adjudicate any dispute arising under this Agreement or the Act. Furthermore, nothing herein waives the right of any Party to object to the jurisdiction of any Federal court to adjudicate any dispute arising under this Agreement or the Act.

**16.10 GOVERNING LAW**

This Agreement shall be construed in accordance with applicable State and Federal law.

**16.11 SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

**16.12 ANTI-DEFICIENCY ACT**

The United States shall not be liable for failure to carry out any obligation or activity authorized to be carried out under the Act (including any such obligation or activity under this Agreement) if adequate appropriations are not provided by Congress expressly to carry out the purposes of the Act.

**16.13 NO BENEFIT TO MEMBERS OF CONGRESS OR RESIDENT COMMISSIONERS**

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

**16.14 FEDERAL AUTHORITY**

Exhibit 2.2 is the Act that authorizes the Federal action required to carry out this Agreement. If any amendment of the Act is enacted prior to the Enforceability Date that materially and adversely affects a Party's rights or interests under this Agreement without the written consent of that Party, then that Party, upon its written notice to all other

*Dated as of November 1, 2012*

Parties, shall be relieved of its rights, obligations, and entitlements hereunder; provided, however, that such written notice must be given to all Parties no later than the Enforceability Date.

**16.15 DUPLICATE ORIGINALS AND COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument. This Agreement also may be executed in duplicate originals, each of which shall constitute an original Agreement.

**16.16 NO QUANTIFICATION OR EFFECT ON WATER RIGHTS, CLAIMS OR ENTITLEMENTS TO WATER OF OTHER TRIBES**

Nothing in this Agreement shall be construed to quantify or otherwise affect the Water Rights, claims or entitlements to Water of any tribe, band or community other than the WMAT.

**16.17 NO EFFECT ON FUTURE ALLOCATIONS**

Water received under a lease or exchange of WMAT CAP Water under the Act shall not affect any future allocation or reallocation of CAP Water by the Secretary.

**16.18 CONSTRUCTION AND EFFECT**

The Paragraph and Subparagraph titles used in this Agreement are for convenience only and shall not be considered in the construction of this Agreement.

*Dated as of November 1, 2012*

**16.19 NOTICES AND REPORTS**

All notices and reports required to be given hereunder shall be in writing and may be given in person, by facsimile transmission, or by United States mail postage prepaid, and shall become effective at the earliest date of actual receipt by the Party to whom notice is given, when delivered to the designated address of the Party, or if mailed, forty-eight (48) hours after deposit in the United States mail addressed as shown below or to such other address as such Party may from time to time designate in writing. Any notice or report required to be given hereunder, if due on a date certain that falls on a Saturday, Sunday or federally recognized holiday, shall be due the next following business day.

As to the United States of America:

Secretary of the Interior  
Department of the Interior  
1849 C Street, N.W., Mail Stop 4100-MIB  
Washington, D.C. 20240

Regional Director  
Bureau of Indian Affairs  
Western Regional Office  
2600 N. Central Avenue, 4<sup>th</sup> Floor  
Phoenix, Arizona 85001

Regional Director  
Bureau of Reclamation  
Lower Colorado Region  
P.O. Box 61470  
Boulder City, Nevada 89006-1470

*Dated as of November 1, 2012*

As to the State of Arizona:

Office of the Governor  
1700 West Washington Street  
Phoenix, Arizona 85007

Arizona Department of Water Resources  
3550 N. Central Avenue  
Phoenix, Arizona 85012  
Attn: Director

As to the White Mountain Apache Tribe:

Office of the Tribal Chairman  
P.O. Box 1150  
Whiteriver, Arizona 85941

Alternatively, for Federal Express and UPS delivery:  
Office of the Tribal Chairman  
201 East Walnut Street  
Whiteriver, Arizona 85941

As to the Salt River Project Agricultural Improvement and Power District:

Salt River Project  
Agricultural Improvement and Power District  
P.O. Box 52025  
Phoenix, Arizona 85072-2025  
Attn: General Manager

As to the Salt River Valley Water Users' Association:

Salt River Valley Water Users' Association  
P.O. Box 52025  
Phoenix, Arizona 85072-2025  
Attn: General Manager

*Dated as of November 1, 2012*

As to Roosevelt Water Conservation District:

P.O. Box 100  
Higley, Arizona 85236  
Attn: General Manager

As to the Arizona Water Company:

Arizona Water Company  
P.O. Box 29006  
Phoenix, Arizona 85038-9006  
Attn: President

As to the City of Avondale:

City of Avondale  
11465 W. Civic Center Dr.  
Avondale, AZ 85323  
Attn: Avondale City Manager

As to the City of Chandler:

City of Chandler  
Mail Stop 605  
P.O. Box 4008  
Chandler, Arizona 85244-4008  
Attn: City Manager

As to the City of Glendale:

City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301  
Attn: City Manager

As to the City of Peoria:

City of Peoria  
8401 West Monroe Street  
Peoria, Arizona 85345  
Attn: City Manager

*Dated as of November 1, 2012*

As to the City of Mesa:

City of Mesa  
20 E. Main, Suite 750  
Mesa, Arizona 85201  
Attn: City Manager

As to the City of Phoenix:

City of Phoenix  
200 West Washington, Suite 1200  
Phoenix, Arizona 85003-1611  
Attn: City Manager

As to the City of Show Low:

City of Show Low  
550 N. 9th Place  
Show Low, Arizona 85901  
Attn: City Manager

As to the City of Scottsdale:

City of Scottsdale  
3939 Drinkwater Blvd.  
Scottsdale, Arizona 85251  
Attn: City Manager

As to the City of Tempe:

City of Tempe  
31 East 5<sup>th</sup> Street  
Tempe, Arizona 85281  
Attn: City Manager

*Dated as of November 1, 2012*

As to the Town of Gilbert:

Town of Gilbert  
50 E Civic Center Drive  
Gilbert, Arizona 85299  
Attn: Town Manager

As to the Buckeye Irrigation Company:

Buckeye Irrigation Company  
P.O. Box 1726  
Buckeye, Arizona 85236  
Attn: General Manager

As to the Buckeye Water Conservation and Drainage District:

Buckeye Water Conservation and Drainage District  
P.O. Box 1726  
Buckeye, Arizona 85236  
Attn: General Manager

As to the CAWCD:

Central Arizona Water Conservation District  
P.O. Box 43020  
Phoenix, Arizona 85080-3020  
Attn: General Manager

or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by Subparagraph 16.19.

**17.0 EXECUTION BLOCKS**

**IN WITNESS WHEREOF**, the Parties have executed this Agreement dated as of the day and year first above written.

*Dated as of November 1, 2012*

**THE UNITED STATES OF AMERICA**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Secretary of the Interior

*Dated as of November 1, 2012*

**THE STATE OF ARIZONA**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Governor

Attest: \_\_\_\_\_

Secretary of State

*Dated as of November 1, 2012*

**WHITE MOUNTAIN APACHE TRIBE**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Chairman

Attest: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_

Attorney

*Dated as of November 1, 2012*

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

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest and Countersigned: \_\_\_\_\_

Secretary

Approved as to form:

\_\_\_\_\_

Attorney

*Dated as of November 1, 2012*

**SALT RIVER VALLEY WATER USERS' ASSOCIATION**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest and Countersigned: \_\_\_\_\_

Secretary

Approved as to form: \_\_\_\_\_

\_\_\_\_\_

Attorney

*Dated as of November 1, 2012*

**THE ROOSEVELT WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest: \_\_\_\_\_

Secretary

Approved as to form:

\_\_\_\_\_

General Counsel

*Dated as of November 1, 2012*

**ARIZONA WATER COMPANY**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest: \_\_\_\_\_

Secretary

Approved as to form:

\_\_\_\_\_

General Counsel

*Dated as of November 1, 2012*

**CITY OF CHANDLER**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Mayor

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_ *CH fa*

City Attorney

*Dated as of November 1, 2012*

**CITY OF GLENDALE**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

City Manager

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

*Dated as of November 1, 2012*

**CITY OF MESA**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

City Manager

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

*Dated as of November 1, 2012*

**CITY OF PEORIA**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Mayor

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

*Dated as of November 1, 2012*

**CITY OF PHOENIX**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

City Manager, City of Phoenix

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

By: \_\_\_\_\_

City Attorney

*Dated as of November 1, 2012*

**CITY OF SHOW LOW**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Mayor

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

*Dated as of November 1, 2012*

**CITY OF SCOTTSDALE**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Mayor

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

*Dated as of November 1, 2012*

**CITY OF TEMPE**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Mayor

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

*Dated as of November 1, 2012*

**CITY OF AVONDALE**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

City Manager

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

*Dated as of November 1, 2012*

**TOWN OF GILBERT**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Town Mayor

Attest: \_\_\_\_\_

Town Clerk

Approved as to form:

\_\_\_\_\_

Town Attorney

*Dated as of November 1, 2012*

**BUCKEYE IRRIGATION COMPANY**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest: \_\_\_\_\_

Secretary

Approved as to form:

\_\_\_\_\_

General Counsel

*Dated as of November 1, 2012*

**BUCKEYE WATER CONSERVATION  
AND DRAINAGE DISTRICT**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest: \_\_\_\_\_

Secretary

Approved as to form:

\_\_\_\_\_

General Counsel

*Dated as of November 1, 2012*

**CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest: \_\_\_\_\_

Secretary

Approved as to form:

\_\_\_\_\_

General Counsel

## **EXHIBIT 10.1.1B**

### **LEASE AGREEMENT FOR CAP WATER AMONG THE CITY OF CHANDLER, THE WHITE MOUNTAIN APACHE TRIBE, AND THE UNITED STATES**

#### 1. PREAMBLE

This agreement providing for the lease of Central Arizona Project water ("Lease Agreement"), made this \_\_\_\_ day of \_\_\_\_\_, 201\_, is among the United States of America (hereinafter "United States"), the White Mountain Apache Tribe (hereinafter "WMAT") and the City of Chandler, Arizona (hereinafter "Chandler").

#### 2. RECITALS

2.1 The Parties to this Lease Agreement are also parties to the Quantification Agreement as defined under Subparagraph 3.31 herein.

2.2 As partial consideration for entering into the Quantification Agreement, the WMAT and Chandler are entering into this Lease Agreement by which the WMAT will lease to Chandler a portion of the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract No. 08-XX-30-W0529. The Parties acknowledge that the consideration received by the WMAT in exchange for the Leased Water represents fair market value.

2.3 The White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010) ("Act"), a copy of which is attached as Exhibit 2.2 to the Quantification Agreement, confirms the Quantification Agreement and specifically authorizes the WMAT to lease WMAT CAP Water.

2.4 The WMAT CAP Water Delivery Contract, which authorizes the WMAT to enter into this Lease Agreement, is attached to the Quantification Agreement as Exhibit 7.1.

### 3.0 DEFINITIONS

The following terms when capitalized shall have the following meaning:

3.1 “CAP” or “Central Arizona Project” shall mean the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. §§ 1521 et seq.).

3.2 “CAP Contract” shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, for delivery of CAP Water.

3.3 “CAP Contractor” shall mean an individual or entity that has entered into a long-term contract, as that term is used in the CAP Repayment Stipulation, with the United States for delivery of water through the CAP System.

3.4 “CAP Indian Priority Water” shall mean that CAP Water having an Indian delivery priority under the CAP Repayment Contract.

3.5 “CAP M&I Priority Water” shall mean that CAP Water having a municipal and industrial delivery priority under the CAP Repayment Contract.

3.6 “CAP NIA M&I Equivalent Priority Water” shall mean, through December 31, 2107, that CAP NIA Priority Water firmed with priority equivalent to CAP M&I Priority Water as provided in Subparagraph 7.17 of the Quantification Agreement, and, after December 31, 2107, shall mean CAP NIA Priority Water that is not firmed with priority equivalent to CAP M&I Priority Water unless the United States or the State have agreed to firm CAP NIA Priority

Water with priority equivalent to CAP M&I Priority Water beyond December 31, 2107 as provided in Subparagraph 7.17.3 of the Quantification Agreement.

3.7 “CAP NIA Priority Water” shall mean that water deliverable under a CAP Contract or CAP Subcontract providing for the delivery of non-Indian agricultural priority water.

3.8 “CAP NIA Priority Water Lease Charge” shall be that amount of money paid to the WMAT for CAP NIA Priority Water as calculated pursuant to Subparagraph 4.3.1.2 of this Lease Agreement.

3.9 “CAP NIA Priority Water Lease Rate” is defined in Subparagraph 4.3.1.2 of this Lease Agreement.

3.10 “CAP Repayment Contract” shall mean: (1) the contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

3.11 “CAP Repayment Stipulation” shall mean 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.

3.12 “CAP Service Area” or “District” shall mean the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties, or portions thereof, that may hereafter become part of the District.

3.13 “CAP Subcontract” shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.14 “CAP Subcontractor” shall mean an individual or entity that has entered into a long-term subcontract, as that term is used in the CAP Repayment Stipulation, with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

3.15 “CAP System” shall mean: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).

3.16 “CAP Water” shall mean ‘Project Water’ as that term is defined in the CAP Repayment Stipulation.

3.17 “CAWCD” or “Central Arizona Water Conservation District” shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

3.18 “Cities” shall mean the municipalities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale, and Tempe.

3.19 “Chandler” shall mean the City of Chandler, an Arizona Municipal Corporation, its predecessors, successors and assigns.

3.20 “CPI-U” shall mean the All Items Consumer Price Index All Urban Consumers, U.S. City Average (1982-84 = 100), which is published by the U.S. Department of Labor, Bureau of Labor Statistics.

3.21 “Enforceability Date” shall mean the date described in Section 309(d)(1) of the Act.

3.22 “Gila River Adjudication Proceedings” shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated)*.

3.23 “HVID CAP Water” shall mean that water that was acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP Subcontract entitlement in accordance with Contract No. 3-07-30-W0290 among CAWCD, Harquahala Valley Irrigation District and the United States, and converted to CAP Indian Priority Water pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628 Title IV, 104 Stat. 4468, 4480.

3.24 “HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge” shall be that amount of money paid to the WMAT for HVID CAP Water and CAP NIA M&I Equivalent Priority Water as calculated pursuant to Subparagraph 4.3.1.1 of this Lease Agreement.

3.25 “HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Rate” is defined in Subparagraph 4.3.1.1 of this Lease Agreement.

3.26 “Leased Water” shall mean that portion of the WMAT CAP Water that is leased by the WMAT to Chandler pursuant to this Lease Agreement.

3.27 “OM&R” shall mean the care, operation, maintenance, and replacement of the CAP System or any part thereof.

3.28 “Operating Agency” shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP System. CAWCD is the Operating Agency at the time of execution of this Lease Agreement.

3.29 “Other Cities” shall mean the municipalities of Avondale, Gilbert, Glendale, Mesa, Phoenix, Peoria, Scottsdale and Tempe.

3.30 “Party” shall mean an entity represented by a signatory to this Lease Agreement. “Parties” shall mean more than one of these entities.

3.31 “Quantification Agreement” shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary. This Lease Agreement constitutes Exhibit 10.1.1B to the Quantification Agreement.

3.32 “Secretary” shall mean the Secretary of the United States Department of the Interior.

3.33 “Subparagraph” shall mean a numbered subparagraph of this Lease Agreement.

3.34 “Total Water Lease Charge” shall mean the sum of the HVID CAP Water and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease

Charge.

3.35 “United States” or “United States of America” in any given reference herein shall mean the United States acting in the capacity as set forth in said reference. When the term “United States” or “United States of America” is used in reference to a particular agreement or contract, the term shall mean the United States acting in the capacity as set forth in such agreement or contract.

3.36 “White Mountain Apache Tribe” or “the WMAT” shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. § 476).

3.37 “WMAT CAP Water” shall mean CAP Water to which the WMAT is entitled pursuant to the WMAT CAP Water Delivery Contract.

3.38 “WMAT CAP Water Delivery Contract” shall mean: (A) Contract No. 08-XX-30-W0529 between the WMAT and the United States dated \_\_\_\_\_, a copy of which is attached to the Quantification Agreement as Exhibit 7.1; and (B) any amendment to that contract.

3.39 “WMAT Reservation” or “Reservation” shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871, as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the “Fort Apache Reservation” pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached as Exhibit 2.81 to the Quantification Agreement. The depiction of

the Reservation on the map attached as Exhibit 2.81 to the Quantification Agreement shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundary of the Reservation.

3.40 "Year" shall mean a calendar year. When not capitalized, the term "year" shall have the meaning in the Paragraph or Subparagraph in which the term is used.

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

#### 4.0 LEASE OF WATER

4.1 Subject of Lease. The WMAT hereby leases to Chandler (1) One Hundred Seventy-Six (176) acre-feet per year of its HVID CAP Water and (2) One Thousand Eighty-Five (1,085) acre-feet per year of its CAP NIA M&I Equivalent Priority Water and (3) Three Thousand Three Hundred Thirty-Six (3,336) acre-feet per year of its CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The Leased Water is subject to the terms and conditions of the WMAT CAP Water Delivery Contract except as agreed to herein. Chandler shall not be subject to amendments to the WMAT CAP Delivery Contract subsequent to the execution of this Lease Agreement that adversely affect this Lease Agreement unless Chandler agrees to such amended terms in writing.

4.2 Term of Lease Agreement. The term of this Lease Agreement shall begin thirty (30) days after the Enforceability Date and end one hundred (100) years thereafter. At the WMAT's sole

discretion and with the approval of the Secretary, the WMAT may enter into a separate lease agreement with Chandler for WMAT CAP Water upon such terms and conditions as may be negotiated at that time either during the term of this Lease Agreement or thereafter, provided however, that the term of any such separate lease shall not exceed one hundred (100) years.

4.3 Chandler's Consideration During Initial Term of Lease Agreement.

4.3.1 Total Water Lease Charge. In consideration for the Leased Water during the term of the Lease Agreement, Chandler shall pay to the WMAT a one-time Total Water Lease Charge which is equal to the sum of the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge and the CAP NIA Priority Water Lease Charge as hereafter determined under Subparagraphs 4.3.1.1 and 4.3.1.2 respectively:

4.3.1.1 HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be the amount of money paid to WMAT by Chandler under this Lease Agreement for HVID CAP Water and CAP NIA M&I Equivalent Priority Water. The HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge shall be determined by dividing the CPI-U most recently published and available prior to the Enforceability Date by the CPI-U as published for the month of October, 2008 to determine the ratio (hereafter "ratio"), then multiplying the ratio as determined above by the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment of Two Thousand Five Hundred Fifty Dollars (\$2,550) to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, and then multiplying the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate, as determined above, by One Thousand Two Hundred Sixty-One (1,261)

acre-feet (“AF”) to determine the HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge.

4.3.1.2 CAP NIA Priority Water Lease Charge. The CAP NIA Priority Water Lease Charge shall be the amount of money paid to WMAT by Chandler under this Lease Agreement for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement. The CAP NIA Priority Water Lease Charge shall be determined by multiplying the ratio by the CAP NIA Priority Water base payment of Two Thousand Seventy Four Dollars (\$2,074) to determine the CAP NIA Priority Water Lease Rate, and then multiplying the CAP NIA Priority Water Lease Rate, as determined above, by Three Thousand Three Hundred Thirty-Six (3,336) AF to determine the CAP NIA Priority Water Lease Charge.

4.3.1.3. An example showing the manner in which the calculation required by this Subparagraph 4.3.1 shall be made, is as follows:

Assuming, solely for purposes of this example, that: (1) the amount of HVID CAP Water and CAP NIA M&I Equivalent Priority Water leased is 1,000 AF per year; (2) the amount of CAP NIA Priority Water leased that is not firmed under Section 7.17 of the Quantification Agreement is 1,000 AF per year; (3) the most recently published CPI-U available prior to the Enforceability Date is 240.69; (4) the CPI-U for October 1, 2008 is 211.69; and (5) the HVID CAP Water and CAP NIA M&I Equivalent Priority Water base payment is \$2,550.00; and the CAP NIA Priority Water base payment is \$2,074.00.

*Calculation (all numbers rounded to the nearest hundredth):*

Most recently published CPI-U available prior to Enforceability Date	240.69
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CPI-U as of October 2008	211.69
Ratio equals (240.69 divided by 211.69)	1.14
Base payment for HVID CAP Water and CAP NIA M&I Equivalent Priority Water	\$2,550.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Rate (1.14 x \$2,550.00)	\$2,907.00
HVID CAP and CAP NIA M&I Equivalent Priority Water Lease Charge (\$2,907.00 x 1,000 AF)	\$2,907,000.00
Base payment for CAP NIA Priority Water (non-firmed)	\$2,074.00
CAP NIA Priority Water Lease Rate (1.14 x \$2,074.00)	\$2,364.36
CAP NIA Priority Water Lease Charge (\$2,364.36 x 1,000 AF)	\$2,364,360.00
Total Water Lease Charge (\$2,907,000.00 + \$2,364,360.00) =	\$5,271,360.00

In the event the CPI-U is discontinued or not otherwise available as of the month in which the term begins, the Parties shall select a comparable index.

4.3.2 Chandler may, at its election, pay the Total Water Lease Charge in full (without interest) within thirty (30) days after the date that the term begins. In lieu of making such payment, Chandler may elect to make payment as follows:

4.3.2.1 An initial payment of one-half (1/2) of the Total Water Lease Charge (as determined pursuant to Subparagraph 4.3.1) within thirty (30) days after the date that the term begins, with the remaining balance to be paid in four (4) annual payments, payable on the next four (4) anniversary dates of the date that the term begins. Each such payment shall be one-eighth (1/8) of the Total Water Lease Charge plus interest on the unpaid balance at an annual rate determined as follows: one percent (1%) over the net interest rate paid by the City of Phoenix on its most recently

issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent. An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.1 shall be made is as follows:

Assume, solely for purposes of this example, that the Total Water Lease Charge is \$1,000,000 and the net interest rate paid by the City of Phoenix on its most recently issued Water System Improvement Junior Lien Revenue Bonds, as of the Enforceability Date is five percent (5%). Under this example, the applicable resulting interest rate would be six percent (6%) [5% + 1% = 6%] and payments including interest under this Subparagraph 4.3.2.1 would be calculated as follows: Chandler would make an initial payment of \$500,000. The first annual installment would be in the principal amount of [ $\$1,000,000 \times 1/8 = \$125,000$ ] plus interest on the unpaid balance of [ $\$1,000,000 - \$500,000 = \$500,000$ ] in the amount of [ $\$500,000 \times .06 = \$30,000$ ], for a total payment of [ $\$125,000 + \$30,000 = \$155,000$ ]. The second annual installment would be in the principal amount of \$125,000 plus interest on the unpaid balance of [ $\$1,000,000 - \$625,000 = \$375,000$ ] in the amount of [ $\$375,000 \times .06 = \$22,500$ ], for a total payment of [ $\$125,000 + \$22,500 = \$147,500$ ]. The third annual installment would be in the principal amount of \$125,000 plus interest on the unpaid balance of [ $\$1,000,000 - \$750,000 = \$250,000$ ] in the amount of [ $\$250,000 \times .06 = \$15,000$ ], for a total payment of [ $\$125,000 + \$15,000 = \$140,000$ ]. The fourth

and final annual installment would be in the principal amount of \$125,000 plus interest on the unpaid balance of [ $\$1,000,000 - \$875,000 = \$125,000$ ] in the amount of [ $\$125,000 \times .06 = \$7,500$ ], for a total payment of [ $\$125,000 + 7,500 = \$132,500$ ].

4.3.3 Under the payment option set forth in Subparagraph 4.3.2.1 without any prepayment penalty, Chandler may, at any time, elect to pay the remaining balance in full together with interest on the unpaid balance to the date of such payment.

4.4 CAP Fixed OM&R Charges and CAP Pumping Energy Charges. Chandler shall pay all CAP Fixed OM&R Charges and CAP Pumping Energy Charges for the delivery of the Leased Water to the Operating Agency as mandated by Section 306 (a) (1) (A) (iii) of the Act and upon the same terms and conditions as are mandated by article 5.1 of Chandler's CAP M&I Water Service Subcontract No. 07-XX-30-W0476, as amended, ("Chandler's CAP M&I Water Service Subcontract") except that Chandler's obligation to pay such CAP Fixed OM&R Charges and CAP Pumping Energy Charges shall not begin earlier than the date that Chandler is entitled to receive water under this Lease Agreement, but in no event unless and until the water is scheduled for delivery by Chandler. CAP Fixed OM&R Charges and CAP Pumping Energy Charges are described as "OM&R Costs" in article 5.1 of Chandler's CAP M&I Water Service Subcontract. Prior to the date that the term of this Lease Agreement (as described in Subparagraph 4.2) begins, the WMAT may use the WMAT CAP Water in accordance with the WMAT CAP Water Delivery Contract.

4.5 Other Charges or Payments. Pursuant to Sections 306 (a)(8) and 306(e) of the Act, neither the WMAT nor Chandler shall be obligated to pay water service capital charges or any other charges, payments, or fees for the Leased Water other than as provided in Subparagraphs 4.3, 4.4, and 4.12, and Paragraph 6.0 of this Lease Agreement.

4.6 Delivery of Water. The United States or the Operating Agency shall deliver the WMAT's Leased Water to Chandler through the CAP System as further provided herein; however, neither the United States nor the Operating Agency shall be obligated to make such deliveries if, in the judgment of the Operating Agency or the Secretary, delivery or schedule of deliveries to Chandler would limit deliveries of CAP water to any CAP Contractor, including the WMAT, or CAP Subcontractor to a degree greater than would direct deliveries to the WMAT at the CAP/SRP Interconnection Facility that connects the Hayden-Rhodes Aqueduct of the CAP System to SRP's water delivery system. The United States or the Operating Agency shall deliver the Leased Water to Chandler in accordance with water delivery schedules provided by Chandler to the United States and the Operating Agency, and the Operating Agency shall inform the WMAT of the amount of Leased Water delivered in the previous year. The water ordering procedures contained in article 4.4 of Chandler's CAP M&I Water Service Subcontract (or any replacement subcontracts) shall apply to Chandler's ordering of water under this Lease Agreement. In no event shall the United States or the Operating Agency be required to deliver to Chandler under this Lease Agreement, in any one month, a total amount of Leased Water greater than eleven percent (11%) of Chandler's annual maximum entitlement under this Lease Agreement; provided, however, that the United States or the Operating Agency may deliver a

greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP water to other CAP Contractors and CAP Subcontractors, as determined by the United States and the Operating Agency if Chandler agrees to accept such increased deliveries.

4.6.1 Delivery of Water During Times of Shortages. If a time of shortage exists, as described at Subparagraphs 7.16.1 and 7.16.2 of the Quantification Agreement (1) the amount of Leased Water that is HVID CAP Water shall be reduced by the same percentage by which water available for delivery as CAP Indian Priority Water is reduced in that Year as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007 and as further provided in Subparagraph 7.16.2 of the Quantification Agreement; (2) the amount of Leased Water that is CAP NIA M&I Equivalent Priority Water available to Chandler under this Lease Agreement, if required to be firmed under the Quantification Agreement or other future agreement, shall be reduced by the same percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with Subparagraph 7.17 of the Quantification Agreement and as provided in Section 4 of Amendment No. 2 of the CAP Repayment Contract dated November 30, 2007, and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract, and if not required to be firmed under the Quantification Agreement or other future agreement, shall be reduced as provided in (3) herein; and (3) the amount of Leased Water that is CAP NIA Priority Water that is not firmed under Subparagraph 7.17 of the Quantification Agreement available to Chandler under this Lease Agreement shall be reduced by the same percentage by which water available for delivery as CAP NIA Priority Water is reduced in that year in accordance with

Subparagraph 7.16.1 of the Quantification Agreement and as provided in subsection 5.8 of the WMAT CAP Water Delivery Contract. Subject to Subparagraph 4.12, any shortage of HVID CAP Water leased from the WMAT and CAP NIA M&I Equivalent Priority Water leased from the WMAT shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement) according to the actual percentages leased, which initially are: Avondale, 2.77%; Chandler, 14.47%; Gilbert, 13.31%; Glendale, 7.44%; Mesa, 9.93%; Peoria, 4.06%; Phoenix, 40.21%; Tempe, 7.81%. Subject to Subparagraph 4.12, any shortage of CAP NIA Priority Water leased from WMAT that is not firmed under Section 7.17 of the Quantification Agreement shall be shared among the Leasing Cities (as that term is defined in Subparagraph 2.48 of the Quantification Agreement), CAWCD and any other entity leasing CAP NIA Priority Water from the WMAT according to the actual percentages leased, which initially are: Avondale, 3.93%; Chandler, 20.49%; Gilbert, 18.83%; Glendale, 10.53%; Mesa, 14.07%; Peoria, 5.74%; Tempe, 11.06%; and CAWCD, 15.35%. Notwithstanding anything to the contrary in this Subparagraph 4.6.1, the United States' and the State of Arizona's obligation to provide water to firm any deliveries of WMAT CAP NIA Priority Water under this Lease Agreement does not extend beyond December 31, 2107; provided, however, that neither the United States nor the State of Arizona is prohibited by this Subparagraph 4.6.1 from providing water to firm any deliveries of WMAT CAP NIA Priority Water beyond December 31, 2107, if, subject to the enactment of any necessary additional authorizing legislation, either agrees to do so in any future agreements.

4.7 Use of Leased Water Outside Reservation. Chandler may use or deliver Leased Water for use outside the boundaries of the Reservation, but may not use, lease, transfer the use of, or otherwise cause the Leased Water to be delivered for use outside of the boundaries of the CAP Service Area, except for use within Chandler's water service area when Chandler's water service area extends beyond the CAP Service Area.

4.8 Conditions Relating to Delivery and Use. Chandler shall have the right to use Leased Water for any purpose that is consistent with Arizona law and not expressly prohibited by this Lease Agreement, including exchanges of the Leased Water for other types of water, and groundwater recharge as that term is defined in the CAP Repayment Contract. Except to the extent that this Lease Agreement conflicts with the terms of Chandler's CAP M&I Water Service Subcontract, deliveries of Leased Water to Chandler and its use by Chandler shall be subject to the Conditions Relating to Delivery and Use in article 4.3 of Chandler's CAP M&I Water Service Subcontract. During the term of this Lease Agreement, the following subarticles or articles of Chandler's CAP M&I Water Service Subcontract shall apply to Chandler and to Chandler's use of water under this Lease Agreement: subarticles 4.5(c), 4.5(d), and 5.2(d); articles 4.6, 4.9, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Chandler expressly approves and agrees to all the terms presently set out in the CAP Repayment Contract, 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 CAP Repayment Contract, to the extent not inconsistent with the express provisions of this Lease Agreement.

4.9 Quality of Water. The OM&R of the CAP System 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 Secretary. The United States, the WMAT, and the Operating Agency make no warranty as to the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. Chandler waives its right to make a claim against the United States, the Operating Agency, the WMAT, other lessee(s), or CAP Subcontractor(s) because of changes in water quality caused by the commingling of Leased Water with other water.

4.10 Points of Delivery. The Leased Water to be delivered to Chandler pursuant to the provisions of this Lease Agreement shall be delivered at turnouts on the CAP System or such other points that may be agreed upon by Chandler, the United States and the Operating Agency.

4.11 WMAT's Covenants. The WMAT agrees:

(A) To observe and perform all obligations imposed on the WMAT by the WMAT CAP Water Delivery Contract which are not assumed by Chandler so that Chandler's rights and duties are not in any way impaired;

(B) Not to execute any other lease of the WMAT Water, that would impair Chandler's rights and duties hereunder;

(C) Not to alter or modify the terms of the WMAT CAP Water Delivery Contract in such a way as to impair Chandler's rights hereunder or exercise any right or action permitted by the WMAT CAP Water Delivery Contract so as to interfere with or change the rights and obligations of Chandler hereunder; and

(D) Not to terminate or cancel the WMAT CAP Water Delivery Contract or transfer, convey or permit a transfer or conveyance of such contract so as to cause a termination of, interference with, or modification of the rights and obligations of the WMAT under it.

4.12 Assignment of Interest in Leased Water.

(A) General. Chandler may not transfer, assign, sublease or otherwise designate or authorize for the use of others all or any part of the Leased Water without the written approval of the WMAT and the Secretary.

(B) Assignment to the Cities and CAWCD. Notwithstanding the prohibition of Subparagraph 4.12(A) above, approval is hereby granted by the Secretary and the WMAT to Chandler, if Chandler is not in default of its payment obligations to the WMAT, to assign all or any part of its interest in Leased Water under this Lease Agreement to one or more of the Other Cities, or to CAWCD, as provided in this Subparagraph, or to their successor(s) in interest within the boundaries of their existing or future service areas. Before assigning any part of its interest in Leased Water under this Lease Agreement, Chandler shall offer such interest to all the Other Cities in equal shares. In the event that any of the Other Cities elects not to take its share of Chandler's assignment, the water shall then be offered to all of the remaining Other Cities in equal shares until the full amount of the water is so assigned. If CAP NIA M&I Equivalent Priority Water or HVID CAP Water leased from the WMAT and available for assignment is declined by all of the Other Cities, such interest may be assigned to CAWCD. If CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement is being made available for assignment, then CAWCD may participate in equal shares with the Other Cities. Such assignment shall be effective

only upon the execution by the assignor and the assignee of a Voluntary Assignment and Assumption Agreement, the form of which is attached to this Lease Agreement as Exhibit 4.12 (Exhibit 10.1.1.1A of the Quantification Agreement). A copy of such Voluntary Assignment and Assumption Agreement shall be provided to the Operating Agency, the WMAT and the United States.

(C) Recovery of Costs Allowed. Chandler shall not assign all or any part of its interest in Leased Water hereunder for an amount in excess of that portion of the Total Water Lease Charge that is attributable to the portion of the Leased Water that is assigned. Nothing in this Lease Agreement shall affect Chandler's ability to recover actual future costs, if any, incurred by Chandler for the transportation, treatment, and distribution of the assigned Leased Water.

4.13 Allocation and Repayment of CAP Costs. Pursuant to Section 305(d) of the Act, for the purposes of determining the allocation and repayment of costs of any stage of the CAP constructed after November 21, 2007, the costs associated with the delivery of Leased Water shall be nonreimbursable and shall be excluded from the repayment obligation of CAWCD. Pursuant to Section 306(a)(8) of the Act, no CAP water service capital charges shall be due or payable for the Leased Water.

5. [Intentionally not used].

6. DEFAULT AND REMEDIES

6.1 Events of Default. Any failure by Chandler to pay the consideration specified in Subparagraph 4.3 for the Leased Water within thirty (30) days after any such payments become due shall constitute a default of Chandler's obligations under this Lease Agreement.

6.2 Notice of Default. In the event of a default by Chandler as defined in Subparagraph 6.1 above, the WMAT shall provide written notice (“Notice of Default”) to Chandler and contemporaneously, shall send copies of such notice to the Other Cities and CAWCD specifying the default and demanding that the default be cured within ninety (90) days of the notice. Notice shall be given in the manner and to the Chandler officers specified in Subparagraph 8.10 of this Lease Agreement. The Notice of Default shall specifically describe the default and state the amount due from Chandler, which amount shall be the sum of all payments due the WMAT that should have been paid, but were not paid (“Default Amount”). The purpose of this Subparagraph is to put Chandler, the Other Cities and CAWCD on notice as to the time and cause of default. De minimis mistakes in the Notice of Default shall not invalidate the effectiveness of the Notice of Default.

6.3 Remedies for Failure to Pay. If Chandler fails to cure a non-payment default in accordance with Subparagraph 6.4(A), and if none of the Other Cities or CAWCD cures the non-payment default pursuant to Subparagraph 6.4(B), the WMAT may terminate this Lease Agreement. If the WMAT terminates this Lease Agreement for non-payment of the Total Water Lease Charge required by Subparagraph 4.3, the WMAT shall be entitled to judgment as provided at Subparagraph 6.4(D), but shall not be entitled to any other remedy as a result of such a default.

6.4 Curing for Chandler’s Non-payment. After Notice of Default, the default may be cured as follows:

(A) First Grace Period. During the first thirty (30) days following the Notice of Default (“First Grace Period”), Chandler shall have the exclusive right to cure any such default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued

at the annual rate of ten percent (10%) calculated from the date that the missed payment became due (“Due Date”). During the first fifteen (15) days following the Notice of Default, Chandler shall provide written notice to the Other Cities and CAWCD declaring its intent whether it will cure the default, provided that all payments becoming due during the First Grace Period shall be automatically added to and become a part of the Default Amount and interest thereupon shall accrue in accordance with this provision.

(B) Second Grace Period. In the event that Chandler has not cured the default within thirty (30) days following the Notice of Default, Chandler, any of the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and/or any combination thereof, may thereafter, but only within sixty (60) days following the end of the First Grace Period (“Second Grace Period”), cure the default by tendering the Default Amount to the WMAT together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the Due Date. Each of the Other Cities and CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) that desires to succeed to the interest of Chandler shall, within sixty (60) days of the Notice of Default, give notice to the Other Cities, CAWCD (for CAP NIA Priority Water that is not firmed under Section 7.17 of the Quantification Agreement only) and Chandler that it will be a curing entity and declare the maximum amount of water that it will lease and succeed to the interest of Chandler.

(C) Third Grace Period. If the Other Cities do not cure Chandler’s default for CAP NIA M&I Equivalent Priority Water or HVID CAP Water by the end of the Second Grace Period, then CAWCD may then cure the default by tendering any remaining portion of the Default Amount

within fifteen (15) days after the end of the Second Grace Period (“Third Grace Period”).

Each curing entity shall succeed to the interest and obligation of Chandler to the extent of its contribution, and Chandler and each curing entity shall execute an Assignment and Assumption Agreement in the form attached hereto as Exhibit 6.4 (Exhibit 10.1.1.1B of the Quantification Agreement) whereby the curing entity or entities agree to be bound by the terms of this Lease Agreement to the extent of its/their contribution. Chandler shall be responsible for any proportionate remainder of any Default amount not cured by the Other Cities or CAWCD pursuant to Subparagraphs 6.4(B) and (C). A copy of such Assignment and Assumption Agreement(s) shall be provided by the curing entity to the Operating Agency, the WMAT and the United States. The WMAT shall accept payment from such curing entity or entities in lieu of payment by Chandler. If the curing entities collectively request more water than what is available for assignment and assumption under this Subparagraph, such curing entities shall succeed to the interest of Chandler in equal shares (“Equal Share Amount”); provided, however, if any of the curing entities requests less water than its Equal Share Amount, then the difference between that curing entity’s Equal Share Amount and the amount it requested shall be divided among the other curing entities in equal shares.

If Chandler fails to cure its default within the time-period set forth in Subparagraphs 6.4(B) and (C) it shall execute an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4 with each curing entity; provided, however, that if the default is not fully cured by the end of the Third Grace Period, Chandler’s right to Leased Water that has not been assigned pursuant to Subparagraphs 6.4(B) and (C) shall be forfeited back to the WMAT and the WMAT

shall be entitled to the remedy described in Subparagraph 6.4(D) of this Lease Agreement *pro rata* for that portion that has not been cured as provided for herein. If Chandler, or Chandler and any combination of the Other Cities, and CAWCD have arranged to cure the default and the curing entities have signed all necessary Assignment and Assumption Agreements, but Chandler has either failed or refused to sign such agreement(s) before the end of the Third Grace Period, the Assignment and Assumption Agreements(s) shall be self-executing without the need for Chandler to sign an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4. A cure effected pursuant to this Subparagraph shall constitute full performance of such default payment obligation to the extent of the amount of Leased Water assigned and assumed.

(D) Default Amount. After Notice of Default and after failure to cure as provided for in Subparagraphs 6.4(A), (B) and (C) hereof, Chandler will be indebted to the WMAT and the WMAT will be entitled to judgment for the Default Amount plus an amount equal to three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, together with interest on the three percent (3%) of the balance of the Total Water Lease Charge not yet due and payable, from the time of default until judgment is obtained, and such costs and reasonable attorneys fees as the WMAT incurs after the due date for obtaining and collecting judgment for the unpaid amounts as a result of such default. The balance of such amount shall continue to accrue interest at the rate of ten percent (10%) per annum until paid in full. Payment of this amount plus such accrued interest as provided in this Subparagraph shall constitute full performance of Chandler's obligations under Subparagraph 4.3 of this Lease Agreement.

## 7.0 TERMINATION AND SURRENDER OF WATER

7.1 Voluntary Termination of this Lease. After offering to assign the Leased Water in accordance with Subparagraph 4.12, Chandler may terminate this Lease Agreement at any time by submitting written notice to the WMAT of its decision to terminate at least one year prior to the date that it intends the Lease Agreement to be terminated, provided, however, Chandler must receive the written approval of the WMAT before it may terminate this Lease Agreement pursuant to this Subparagraph 7.1 unless Chandler has paid the WMAT at least one-fourth of the Total Water Lease Charge (plus any interest due) set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Chandler may withdraw its notice. Chandler shall continue to make all payments required by this Lease Agreement during that one-year period and shall not use any Leased Water beyond the day for which the last payment is intended to pay. If Chandler terminates this Lease Agreement, all sums paid by Chandler to the WMAT prior to the date of termination shall remain the property of the WMAT and shall be non-refundable to Chandler.

7.2 Voluntary Surrender of a Portion of the Leased Water. After offering to transfer, assign or sublease the Leased Water in accordance with Subparagraph 4.12, Chandler may elect, at any time during the term of this Lease Agreement to surrender its interest in any portion of the Leased Water by providing written notice to the WMAT of its decision to surrender such interest at least one year prior to the time that it intends to surrender its interest. However, Chandler must receive the written approval of the WMAT before it may surrender any portion of its interest under this Lease Agreement pursuant to this Subparagraph 7.2 unless Chandler has paid

the WMAT at least one-fourth of the Total Water Lease Charge set forth in Subparagraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the WMAT's agreement that Chandler may withdraw its notification. Chandler shall continue to make all payments required of this Lease Agreement during that one year period of time and shall not use any Leased Water that will be surrendered pursuant to this Subparagraph 7.2 beyond the day for which the last payment is intended to pay. If Chandler surrenders its interest in all or any portion of the Leased Water, all sums paid by Chandler to the WMAT for such water prior to the date of surrender shall remain the property of the WMAT and shall be non-refundable to Chandler. All portions of the Lease Agreement shall remain in effect for all the portions of the Leased Water that are not surrendered. To the extent that the retained portion of the Leased Water has not already been paid for by Chandler, payment shall be in proportion to the amount of water retained by Chandler, charged at the per acre-foot charge, including applicable interest, for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement for the years remaining on the term of this Lease Agreement. At the time of the surrender of Leased Water pursuant to this Subparagraph 7.2, Chandler shall pay to the WMAT an amount equal to three percent (3%) of the principal payment for the portion of the Leased Water surrendered.

8. GENERAL PROVISIONS

8.1 United States Consent to Lease Agreement. The United States hereby approves and consents to this Lease Agreement.

8.2 Lease Agreement Renegotiation. The Parties to this Lease Agreement agree that the WMAT and Chandler may renegotiate this Lease Agreement at any time during its term, as

provided in and subject to the provisions of Subparagraph 7.4 of the Quantification Agreement.

8.3 Lease Agreement Extension. If the ADWR has adopted a final rule or substantive policy statement that enables the Lease Water to be counted as part of Chandler's Assured Water Supply if the term of this Lease is extended, the WMAT agrees to meet with Chandler and discuss the extension of the term of the Lease Agreement within the time-frame required by the applicable ADWR rule or substantive policy statement.

8.4 Effective Date. This Lease Agreement shall become effective upon the occurrence of the last of the following events: (1) a date thirty (30) days after the Enforceability Date; or (2) the execution of this Lease Agreement by all Parties.

8.5 Rejection of Lease Agreement. Thirty (30) days after the Enforceability Date Chandler at its option may, upon written notice to the WMAT, reject this Lease Agreement. In the event Chandler rejects this Lease Agreement pursuant to this Subparagraph 8.5, Chandler shall have no obligations under this Lease Agreement and Chandler's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however, the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the date of the Rejection Notice. If the assignment of the entitlement to Leased Water is not completed within ninety (90) days after the date of the Rejection Notice, the Leased Water entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, including leasing the water entitlement to any person or entity within the CAP Service Area.

8.6 Enforceability of Lease Agreement. Upon the occurrence of the events listed in Subparagraph 8.4, this Lease Agreement shall be enforceable between the WMAT and Chandler notwithstanding the performance or non-performance of other provisions of the Quantification Agreement not related to this Lease Agreement. The provisions of the Quantification Agreement that relate to this Lease Agreement include, without limitation, Paragraphs 7.0 and 10.0.

8.7 Invalidity of Lease Agreement. If, as a result of any acts or omissions by a person or entity not a Party to this Lease Agreement, Chandler's entitlement to Leased Water under this Lease Agreement is determined to be invalid by a final judgment entered over the opposition of Chandler with the result that the Lease Agreement is deemed null and void, the WMAT shall refund to Chandler that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term. In the event this Lease Agreement becomes null and void as contemplated by this Subparagraph 8.7, Chandler's entitlement shall be offered to the Other Cities and CAWCD as provided in Subparagraph 4.12(B) until that water is fully leased, provided, however the assignment of the entitlement as provided in Subparagraph 4.12(B) must be completed no later than ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed to be null and void; and further provided, that the Other Cities or CAWCD, as the case may be, accepting the assignment must pay to the WMAT an amount equal to the amount of money refunded by WMAT to Chandler. If the assignment to the Other Cities or CAWCD and payment to the WMAT for the assigned entitlement to Leased Water is not completed within ninety (90) days after the WMAT serves written notice that this Lease Agreement by a final judgment has been deemed null and void, the Leased Water

entitlement shall revert back to the WMAT for disposition by the WMAT at its sole discretion, subject to the requirements of the Act and the Quantification Agreement, including leasing the water entitlement in accordance with the provisions of Paragraph 9.0 of the Quantification Agreement.

8.8 Approval, Consent and Ratification. Each Party to this Lease Agreement does by execution of the signature pages hereto, approve, endorse, consent to and ratify this Lease Agreement.

8.9 Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

8.10 Notice. Any notice to be given or payment to be made under this Lease Agreement shall be properly given or made when received by the officer designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows (or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by this Section 8.10):

(a) As to the United States:

The Secretary of the Interior  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Regional Director  
Western Region Office  
Bureau of Indian Affairs  
2600 N. Central Avenue, 4<sup>th</sup> Floor  
Phoenix, Arizona 89006-1470

Regional Director  
Bureau of Reclamation  
Lower Colorado Region  
P.O. Box 61470  
Boulder City, Nevada 89005

(b) As to the WMAT:

Office of the Tribal Chairman  
White Mountain Apache Tribe  
P.O. Box 1150  
Whiteriver, Arizona 85941

Alternatively, for Federal Express and UPS delivery:  
Office of the Tribal Chairman  
201 East Walnut Street  
Whiteriver, Arizona 85941

Office of the Tribal Attorney  
White Mountain Apache Tribe  
P.O. Box 2110  
Whiteriver, AZ 85941

(c) As to the Cities:

Avondale City Manager  
11465 W. Civic Center Dr.  
Avondale, AZ 85323

Avondale City Attorney  
Gust Rosenfeld P.L.C.  
Attention: Andrew McGuire  
1 E. Washington, Suite 1600  
Phoenix, AZ 85004-2553

Chandler City Manager  
P.O. Box 4008 Mail Stop 605  
Chandler, AZ 85244-4008

Chandler City Attorney  
P.O. Box 4008 Mail Stop 602  
Chandler, Arizona 85225-4008

Gilbert Town Manager  
50 East Civic Center Drive  
Gilbert, AZ 85296

Gilbert Town Attorney  
Curtis, Goodwin, Sullivan,  
Udall and Schwab P.L.C.  
501 East Thomas Road  
Phoenix, AZ 85012

Glendale City Manager  
5850 West Glendale Ave.  
Glendale, AZ 85301

Glendale City Attorney  
5850 West Glendale Avenue  
Glendale, Arizona 85301

Mesa City Manager  
P.O. Box 1466  
Mesa, AZ 85211-1466

Mesa City Attorney  
P.O. Box 1466  
Mesa, Arizona 85211-1466

Peoria City Manager  
8401 West Monroe  
Peoria, Arizona 85345

Peoria City Attorney  
8401 West Monroe  
Peoria, Arizona 85345-6560

Phoenix City Manager  
200 West Washington, Suite 1200  
Phoenix, Arizona 85003

Phoenix City Attorney  
200 W. Washington, Suite 1300  
Phoenix, Arizona 85003-1611

Scottsdale City Manager  
3939 North Drinkwater Blvd.  
Scottsdale, AZ 85251

Scottsdale City Attorney  
3939 North Drinkwater Blvd.  
Scottsdale, Arizona 85251

Tempe City Manager  
31 East 5<sup>th</sup> Street  
Tempe, Arizona 85281

Tempe City Attorney  
21 E. 6th St., Suite 201  
Tempe, Arizona 85281

(d) As to CAWCD:

Central Arizona Water Conservation District  
23636 North 7<sup>th</sup> Street  
Phoenix, Arizona 85024-3801  
Attn: General Manager

8.11 Governing Law. This Lease Agreement shall be governed by and construed in accordance with applicable Arizona and federal law.

8.12 Waiver. No waiver of any breach of any of the terms or conditions of this Lease Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease Agreement.

8.13 Severability. If any provision or clause of this Lease Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Lease Agreement which can be given effect without the invalid or unenforceable provision, clause or

application, and to this end, the provisions and clauses of this Lease Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any Party of its material benefits under this Lease Agreement.

8.14 Construction and Effect. This Lease Agreement and each of its provisions are to be construed fairly and reasonably and not strictly for or against any Party. The Paragraph and Subparagraph titles used in this Lease Agreement are for convenience only and shall not be considered in the construction of this Lease Agreement.

8.15 Successors and Assigns. Each of the terms and conditions of this Lease Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

8.16 Benefits of Lease Agreement. No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

8.17 Third Party Beneficiaries. With the exception of the Other Cities and CAWCD, which shall be third party beneficiaries for enforcement of Subparagraphs 4.12, 6.4, 8.5 and 8.7, there shall be no third party beneficiaries of this Lease Agreement.

8.18 Good Faith Negotiations. This Lease Agreement has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease Agreement may be used as either evidence or argument by any Party hereto in any legal or administrative proceeding other than a proceeding for the interpretation or

enforcement of this Lease Agreement.

8.19 Attorneys' Fees. In the event of litigation between the Parties to enforce this Lease Agreement, the prevailing Party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, without limitation, court costs, attorneys' fees and discovery costs; provided, however, that this Subparagraph 8.19 shall not apply to the United States.

8.20 Remedies for Default on Matters other than Failure to Pay. The WMAT may enforce by the remedy of specific performance any City obligation, other than an obligation to pay which is addressed in Subparagraphs 6.3 and 6.4(D) of this Lease Agreement. The WMAT shall not be entitled to any other remedy as a result of such default. Actions to enforce the terms and conditions of this Lease Agreement are subject to the provisions of Subparagraph 8.19.

IN WITNESS WHEREOF the Parties have executed this Lease Agreement on the date written above.

**[SIGNATURE PAGES FOLLOW]**

**FOR THE WHITE MOUNTAIN APACHE TRIBE**

By: \_\_\_\_\_  
Chairman

Attest \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

**FOR THE UNITED STATES OF AMERICA**

By: \_\_\_\_\_  
Regional Director  
Lower Colorado Region  
Bureau of Reclamation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Regional Director  
Western Region  
Bureau of Indian Affairs

Dated: \_\_\_\_\_

**FOR THE CITY OF CHANDLER**

By: \_\_\_\_\_  
Mayor, City of Chandler

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

Approved as to form:

By: \_\_\_\_\_ *CH for*  
City Attorney

**Exhibit 4.12 of the \_\_\_\_\_ Lease Agreement  
(Form of which is Exhibit 10.1.1.1A of the Quantification Agreement)**

**VOLUNTARY ASSIGNMENT AND ASSUMPTION  
OF LEASED WATER**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned \_\_\_\_\_ (“Assignor”), hereby transfers, assigns and conveys to the \_\_\_\_\_ (“Assignee”) \_\_\_ percent (\_\_\_%) of the following:

Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated \_\_\_\_\_ between Assignor and the White Mountain Apache Tribe (the “WMAT”) and the United States (“Lease Agreement”). This \_\_\_ percent (\_\_\_%) equals \_\_\_ acre-feet of Leased Water.

**1. Voluntary Assignment and Assumption Pursuant to Subparagraph 4.12 of Lease Agreement.**

This Voluntary Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 4.12 of the Lease Agreement. Except as provided in Paragraph 2 of this Voluntary Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

**2. Assumption of Rights and Obligations Under Lease Agreement.** Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's

percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor's Lease Agreement for the period prior to the date hereof and Assignee shall have no liability therefor. Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date of this Voluntary Assignment and Assumption Agreement for the assigned portion of the Leased Water. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Voluntary Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Voluntary Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0. of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned to Assignee by this Voluntary Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

5. **Counterparts.** This Voluntary Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Voluntary Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Voluntary Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto.

IN WITNESS WHEREOF the parties have executed this Voluntary Assignment and Assumption Agreement on the \_\_\_\_ day of \_\_\_\_\_, 2\_\_.

\_\_\_\_\_ (Assignor)

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Its \_\_\_\_\_

Approved as to form: \_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_ (Assignee)

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Its \_\_\_\_\_

Approved as to form: \_\_\_\_\_

Its \_\_\_\_\_

The parties to this Voluntary Assignment and Assumption Agreement certify that a copy of this Voluntary Assignment and Assumption Agreement was provided in accordance with Subparagraphs 4.12 (B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on \_\_\_\_\_ \_\_, 2\_\_.

**Exhibit 6.4 of the \_\_\_\_\_ Lease Agreement  
(Form of which is Exhibit 10.1.1.1B of the Quantification Agreement)**

**ASSIGNMENT AND ASSUMPTION OF LEASED WATER**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned \_\_\_\_\_ (“Assignor”), hereby transfers, assigns and conveys to the \_\_\_\_\_ (“Assignee”) \_\_\_\_\_ percent (\_\_\_%) of the following:

Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated \_\_\_\_\_ between Assignor and the White Mountain Apache Tribe (the “WMAT”) and the United States (“Lease Agreement”). This \_\_\_ percent (\_\_\_%) equals \_\_\_ acre-feet of Leased Water.

**1. Assignment and Assumption Pursuant to Subparagraph 6.4 of Lease Agreement.** This Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 6.4 of the Lease Agreement. Except as provided in Paragraph 2 of this Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

**2. Assumption of Rights and Obligations Under Lease Agreement.** Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of the Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof, except that Assignee agrees to pay and be

responsible to the WMAT for the Assignee's share of the Default Amount set forth in Subparagraph 6.2 of the Lease Agreement. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor under the Lease Agreement for the period prior to the date of default under Subparagraph 6.1 of the Lease Agreement and Assignee shall have no liability therefor. For the assigned portion of the Leased Water, Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date that this Assignment and Assumption Agreement is effective. Nothing herein shall affect the WMAT's rights as against the Assignor for acts or omissions arising before the date of this Assignment and Assumption Agreement.

3. **Other Acts.** Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the WMAT pursuant to Paragraph 10.0 of the Quantification Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned by this Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

5. **Counterparts.** This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs; provided, however, that this Paragraph 6.0 shall not apply to the United States.

7. **Effective Date.** This Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto and the Assignee has paid its share of the Default Amount in accordance with Subparagraph 6.4 (B) of the Lease Agreement, or if not signed by Assignor, upon Assignee's signature in accordance with the provisions of Subparagraph 6.4 (B) of the Lease Agreement describing "self execution", and the Assignee's payment of its share of the Default Amount.

IN WITNESS WHEREOF the parties have executed this Assignment and Assumption Agreement on the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_ (Assignor)

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Its \_\_\_\_\_

Approved as to form: \_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_ (Assignee)

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

Its \_\_\_\_\_

Approved as to form: \_\_\_\_\_

Its \_\_\_\_\_

The parties to this Assignment and Assumption Agreement certify that a copy of this Assignment and Assumption Agreement was provided in accordance with Subparagraphs 6.4(B) and 8.10 of the Lease Agreement to the White Mountain Apache Tribe, the United States and the Operating Agency on \_\_\_\_\_ \_\_, 2\_\_\_\_.

## EXHIBIT 12.1

### **WAIVER AND RELEASE OF CLAIMS BY PARTIES OTHER THAN THE WMAT ON BEHALF OF ITSELF AND ITS MEMBERS AND THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE WMAT AND ITS MEMBERS**

This Waiver and Release of Claims dated as of \_\_\_\_\_, is entered into by the Parties to the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012 (“Agreement”), other than the WMAT on behalf of itself and its Members and the United States acting in its capacity as trustee for the WMAT and its Members.

#### **1.0 DEFINITIONS.**

For purposes of this Waiver and Release of Claims, the capitalized terms used herein shall have the meanings set forth in Attachment 1 hereto. In the event a capitalized term used herein is not listed on Attachment 1, such term shall have the meaning set forth for such term in the Agreement.

#### **2.0 WAIVER AND RELEASE OF CLAIMS.**

Except as provided in Paragraph 3.0 hereof, the Parties, except the WMAT on behalf of itself and its Members and the United States acting in its capacity as trustee for the WMAT and its Members, as part of their obligations under the Agreement, hereby waive and release any claims that such Parties may have against the WMAT and its Members and the United States acting in its capacity as trustee for the WMAT and its Members under Federal, State or other law for all:

- (a) Past and present claims for Injury to Water Rights resulting from the Diversion or Use of Water on the Reservation and on Off-Reservation Trust Land arising from time immemorial through the Enforceability Date;
- (b) Claims for Injury to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on or for the Reservation and on Off-Reservation Trust Land in a manner not in violation of the Agreement;
- (c) Past, present and future claims arising out of, or relating in any manner to, the negotiation, execution, or adoption of the Agreement, an applicable settlement judgment or decree, or the Act.

#### **3.0 RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.**

3.1 Notwithstanding the waivers of claims and releases described in Paragraph 2.0, the Parties, other than the WMAT on behalf of itself and its Members and United States acting in its capacity as trustee for the WMAT and its Members, shall retain any right to:

- (a) Subject to Subparagraph 16.9 of the Agreement, assert claims for injuries to, and seek enforcement of, their rights under the Agreement or the Act in any State court or Federal court of competent jurisdiction;
- (b) Assert claims for injuries to, and seek enforcement of, their rights under the Judgment and Decree entered by the court in the Gila River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.1 to the Agreement;
- (c) Assert claims for injuries to, and seek enforcement of, their rights under the Judgment and Decree entered by the court in the Little Colorado River Adjudication Proceedings, the form of which is attached as Exhibit 12.9.6.2 to the Agreement;
- (d) Assert past, present, and future claims to Surface Water that are not inconsistent with the Agreement;
- (e) Assert any claims to Groundwater that are subject to the Gila River Adjudication Proceedings or the Little Colorado River Adjudication Proceedings, or other applicable law;
- (f) Assert any claims arising after the Enforceability Date for Injury to Water Rights not specifically waived herein.

3.2 This Waiver and Release of Claims shall not bind the State as to a waiver of rights or release of claims, if any, for lands received by the State from the United States pursuant to the provisions of:

- (a) The Act of September 9, 1850, 9 Stat. 446 (creating the Territory of New Mexico);
  - (b) The December 30, 1853 Treaty with Mexico, 10 Stat. 1031 (the Gadsden Purchase);
  - (c) The Act of 1863, 12 Stat. 664 (creating the Territory of Arizona);
  - (d) The Act of February 18, 1881, 21 Stat. 326 (University of Arizona 1881 Grant);
  - (e) The Arizona-New Mexico Enabling Act of June 20, 1910, 36 Stat. 557;
- and
- (f) The Act of February 20, 1929, c. 280, § 2, 45 Stat. 1252 (land for miners' hospitals for disabled miners within said State).

#### **4.0 WAIVER EFFECTIVE UPON ENFORCEABILITY DATE.**

This Waiver and Release of Claims shall become effective upon the Enforceability Date.

#### **5.0 COUNTERPARTS AND DUPLICATE ORIGINALS.**

This Waiver and Release of Claims may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument. This Waiver and Release of Claims also may be executed in duplicate originals, each of which shall constitute an original Waiver and Release of Claims.

**ATTACHMENT 1**  
**DEFINITIONS**

1.1 “Act” shall mean the White Mountain Apache Tribe Water Rights Quantification Act of 2010, P.L. 111-291, Title III, 124 Stat. 3064, 3073 (2010), a copy of which is attached as Exhibit 2.2 to the Agreement.

1.2 “Agreement” shall mean: (1) the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement dated as of November 1, 2012, which amends and restates the White Mountain Apache Tribe Water Rights Quantification Agreement dated January 13, 2009 in accordance with Section 309(d)(1)(A)(i) of the Act; and (2) any amendment or exhibit (including exhibit amendments) to that Agreement that are (i) made in accordance with the Act, or (ii) otherwise approved by the Secretary.

1.3 “Arizona Water Company” shall mean the Arizona corporation of that name, its subsidiaries and affiliates.

1.4 “Buckeye Irrigation Company” shall mean the corporation of that name organized under the laws of the Arizona Territory in 1907.

1.5 “Buckeye Water Conservation and Drainage District” shall mean the entity of that name that is a political subdivision of the State and an irrigation district with power of drainage organized under the laws of the State.

1.6 “CAP Repayment Contract” shall mean: (1) the contract between the United States and CAWCD for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and (2) any amendment to, or revision of, that contract.

1.7 “CAP Repayment Stipulation” shall mean 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.

1.8 “CAP Water” shall mean ‘Project Water’ as that term is defined in the CAP Repayment Stipulation.

1.9 “CAWCD” or “Central Arizona Water Conservation District” shall mean the political subdivision of the State that is the contractor under the CAP Repayment Contract.

1.10 “Effluent” shall mean Water that has been used for domestic, municipal or industrial purposes and that is available for use for any purpose, but Water shall not become Effluent solely as a result of having been used for hydropower generation on the Reservation.

1.11 “Enforceability Date” shall mean the date described in Section 309(d)(1) of the Act.

1.12 “Gila River Adjudication Proceedings” shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated)*.

1.13 “Groundwater” shall mean all Water beneath the surface of the Earth other than Surface Water.

1.14 “Injury to Water Rights” shall mean an interference with, diminution of, or deprivation of, a Water Right under Federal, State or other law. The term “Injury to Water Rights” includes a change in the Groundwater table and any effect of such a change. The term “Injury to Water Rights” does not include any injury to water quality.

1.15 “Little Colorado River Adjudication Proceedings” shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Apache styled *In re: the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source, CIV No. 6417*.

1.16 “Off-Reservation Trust Land” shall mean land (1) outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the WMAT as of the Enforceability Date; and (2) depicted on the map attached to the Agreement as Exhibit 2.57.

1.17 “Party” shall mean an entity represented by a signatory to the Agreement and “Parties” shall mean more than one of such entities. The State’s participation as a Party shall be as described in Subparagraph 16.5 of the Agreement. The United States’ participation as a Party shall be in the capacity as described in Subparagraph 2.72 of the Agreement.

1.18 “Roosevelt Water Conservation District” or “RWCD” shall mean the entity of that name that is a political subdivision of the State and an irrigation district organized under the laws of the State.

1.19 “Secretary” shall mean the Secretary of the United States Department of the Interior.

1.20 “SRP” shall mean the Salt River Project Agricultural Improvement and Power

District, a political subdivision of the State, and the Salt River Valley Water Users' Association, an Arizona Territorial Corporation.

1.21 “State” shall mean the State of Arizona.

1.22 “Surface Water” shall mean all Water that is appropriable under State law. For purposes of the definition of “Water Right,” the term “Surface Water” shall also include Colorado River water.

1.23 “United States” or “United States of America” in any given reference herein shall mean the United States acting in the capacity as set forth in said reference. When the term “United States” or “United States of America” is used in reference to a particular agreement or contract, the term shall mean the United States acting in the capacity as set forth in such agreement or contract.

1.24 “Use” shall mean any beneficial use including instream flows, recharge, underground storage, recovery or any other use recognized as beneficial under applicable law.

1.25 “Water” when used without a modifying adjective shall mean Groundwater, Surface Water, CAP Water, or Effluent.

1.26 “Water Right” shall mean any right in or to Groundwater, Surface Water or Effluent under Federal, State or other law.

1.27 “White Mountain Apache Tribe” or “WMAT” shall mean the White Mountain Apache Tribe, organized under Section 16 of the Act of June 18, 1934, 48 Stat. 984 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. § 476).

1.28 “WMAT Reservation” or “Reservation” shall mean the land located within the exterior boundaries of the White Mountain Indian Reservation established by Executive Order dated November 9, 1871 as modified by subsequent Executive Orders and Acts of Congress: (1) known on December 8, 2010, the date of enactment of the Act, as the “Fort Apache Reservation” pursuant to chapter 3 of the Act of June 7, 1897 (30 Stat. 62); and (2) generally depicted on the map attached to the Agreement as Exhibit 2.81. The depiction of the Reservation on the map attached as Exhibit 2.81 shall not: (1) be used to affect any dispute between the WMAT and the United States concerning the legal boundary of the Reservation; or (2) constitute an admission by the WMAT with regard to any dispute between the WMAT and the United States concerning the legal boundaries of the Reservation.

**THE STATE OF ARIZONA**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Governor

Attest: \_\_\_\_\_

Secretary of State

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

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest and Countersigned: \_\_\_\_\_

Secretary

Approved as to form:

\_\_\_\_\_

Attorney

**SALT RIVER VALLEY WATER USERS' ASSOCIATION**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest and Countersigned: \_\_\_\_\_

Secretary

Approved as to form:

\_\_\_\_\_

Attorney

**THE ROOSEVELT WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest: \_\_\_\_\_

Secretary

Approved as to form:

\_\_\_\_\_

General Counsel

**ARIZONA WATER COMPANY**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest: \_\_\_\_\_

Secretary

Approved as to form:

\_\_\_\_\_

General Counsel

**CITY OF AVONDALE**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

City Manager

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

**CITY OF CHANDLER**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Mayor

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

**CITY OF GLENDALE**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

City Manager

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

**CITY OF MESA**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

City Manager

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

**CITY OF PEORIA**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

City Manager

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

**CITY OF PHOENIX**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

City Manager

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

**CITY OF SHOW LOW**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Mayor

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney *CH for*

**CITY OF SCOTTSDALE**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Mayor

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

**CITY OF TEMPE**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Mayor

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

**TOWN OF GILBERT**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Town Manager

Attest: \_\_\_\_\_

Town Clerk

Approved as to form:

\_\_\_\_\_

Town Attorney

**BUCKEYE IRRIGATION COMPANY**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest: \_\_\_\_\_

Secretary

Approved as to form:

\_\_\_\_\_

General Counsel

**BUCKEYE WATER CONSERVATION  
AND DRAINAGE DISTRICT**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest: \_\_\_\_\_

Secretary

Approved as to form:

\_\_\_\_\_

General Counsel

**CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

President

Attest: \_\_\_\_\_

Secretary

Approved as to form:

\_\_\_\_\_

General Counsel