

#3  
JUL 28 2016



**MEMORANDUM                      MUNICIPAL UTILITIES - MEMO NO. MUA17-002**

**DATE:**            JULY 28, 2016

**TO:**                MAYOR AND COUNCIL

**THRU:**            MARSHA REED, CITY MANAGER *NR for*  
                          JOHN KNUDSON, MUNICIPAL UTILITIES DIRECTOR *[Signature]*

**FROM:**            GREGG CAPPS, WATER RESOURCE MANAGER  
                          KAY BIGELOW, CITY ATTORNEY *KB*

**SUBJECT:**        RESOLUTION NO. 4957 AUTHORIZING EXECUTION OF A LEASE AGREEMENT FOR CAP WATER WITH THE GILA RIVER INDIAN COMMUNITY, A RECLAIMED WATER EXCHANGE AGREEMENT WITH THE GILA RIVER INDIAN COMMUNITY, A CONTRIBUTED FUNDS AGREEMENT WITH THE GILA RIVER INDIAN COMMUNITY, AND AN AGREEMENT WITH GILA RIVER WATER STORAGE, LLC, FOR PURCHASE AND SALE OF LONG-TERM STORAGE CREDITS FOR THE PURCHASE OF 622,000 ACRE-FEET OF CAP WATER, FOR A TOTAL COST OF \$42,860,000.

**RECOMMENDATION:** Staff recommends City Council adopt Resolution No. 4957, authorizing execution of a Lease Agreement for CAP Water with the Gila River Indian Community, a Reclaimed Water Exchange Agreement with the Gila River Indian Community, a Contributed Funds Agreement with the Gila River Indian Community, and an Agreement with Gila River Water Supply, LLC, for Purchase and Sale of Long-Term Storage Credits for the purchase of 622,000 acre-feet of CAP Water, for a total cost of \$42,860,000.

**BACKGROUND AND DISCUSSION:** The Municipal Utilities Department carefully tracks water requirements to ensure a sustainable water supply is available for current and future users. A long-term sustainable water supply is a strategic resource necessary to encourage new development that meets the build-out vision of the City and to meet the demands of residents and businesses during normal supply conditions and surface water shortages due to drought. Additional water is needed based on the City's water demand projections at build-out.

The Gila River Indian Community (Community) and Salt River Project (SRP) have entered a joint venture, Gila River Water Storage, LLC (GRWS), to offer renewable water supplies to water providers in Central Arizona. The City, Community, and GRWS have reached an agreement for four inter-related water transactions: 1) the lease of Central Arizona Project (CAP) water from the Community, 2) an exchange of Chandler reclaimed water for direct delivery of Community CAP water, 3) the purchase of Long Term Storage Credits (LTSC) in the Phoenix and Pinal Active Management Area (AMA) from

GRWS, and 4) a Contributed Funds Agreement to assist with recovery of related LTSC. An acre-foot of surface water that was previously recharged and stored in the aquifer is considered a LTSC. The Pinal AMA LTSC will be used as a payment mechanism for a portion of the lease agreement and recovered by the Community in Pinal County. The Phoenix AMA LTSC, stored locally, will be recovered from City wells. Final approval of the lease and the exchange will be effective after completion of the environmental assessment by the United States Bureau of Reclamation.

Under this agreement, Chandler would acquire 5.55 million gallons per day of water over a 100-year period (622,000 Acre Feet). Water deliveries will begin in calendar year 2019. The water purchased with this agreement will be delivered to Santan Vista and Pecos Surface Water Treatment Plants and recovered through City wells.

**FINANCIAL IMPLICATIONS:** The total cost of this purchase is \$42,860,000. Four (4) annual payments that are currently identified in the City’s Capital Improvement Program are scheduled beginning fiscal year 2016-2017.

Fund Source:

<u>Account No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Amount:</u>
603.3820.4722.6WA672	Water SDF	Water Purchases	Yes	\$34,860,000
605.3820.5231.6WA670	Water Operating	Water Purchases	Yes	<u>\$ 8,000,000</u>
			Total:	\$42,860,000

**PROPOSED MOTION:** Move City Council pass and adopt Resolution No. 4957, authorizing execution of a Lease Agreement for CAP Water with the Gila River Indian Community, a Reclaimed Water Exchange Agreement with the Gila River Indian Community, a Contributed Funds Agreement with the Gila River Indian Community, and an Agreement with Gila River Water Supply, LLC, for Purchase and Sale of Long-Term Storage Credits for the purchase of 622,000 acre-feet of CAP Water, for a total cost of \$42,860,000.

- Attachments: Resolution No. 4957  
GRIC Resolution GR-109-16  
Lease Agreement for CAP Water  
GRIC Resolution GR-110-16  
Reclaimed Water Exchange Agreement  
Purchase and Sale Agreement for Long-Term Storage Credits  
- Exhibit A - Contributed Funds Agreement

**RESOLUTION NO. 4957**

A RESOLUTION OF THE CITY OF CHANDLER, ARIZONA, APPROVING EXECUTION OF A LEASE AGREEMENT FOR CAP WATER WITH THE GILA RIVER INDIAN COMMUNITY, A RECLAIMED WATER EXCHANGE AGREEMENT WITH THE GILA RIVER INDIAN COMMUNITY, A CONTRIBUTED FUNDS AGREEMENT WITH THE GILA RIVER INDIAN COMMUNITY, AND AN AGREEMENT WITH GILA RIVER WATER STORAGE, LLC, FOR PURCHASE AND SALE OF LONG-TERM STORAGE CREDITS FOR THE PURCHASE OF 622,000 ACRE-FEET OF CAP WATER, FOR A TOTAL COST OF \$42,860,000.

WHEREAS, the City carefully tracks water requirements to ensure a sustainable water supply is available for current and future users; and

WHEREAS, a long-term sustainable water supply is a strategic resource necessary to encourage new development that meets the build-out vision of the City and to meet the citizens and businesses' demands; and

WHEREAS, additional water is needed based on the City's water demand projections at build-out; and

WHEREAS, the Gila River Indian Community (the Community) and Salt River Project (SRP) have formed a limited liability company, Gila River Water Storage, LLC (GRWS), to offer renewable water supplies to water providers like the City; and

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

Section 1. The terms and conditions of the lease of Central Arizona Project (CAP) water from the Community, an agreement for the exchange of Chandler reclaimed water for direct delivery to the City, of Community CAP water; an agreement with the Community for contribution to the cost of Community water infrastructure to recover the long term credits, as well as an agreement for the City's purchase of Long-Term Storage Credits in the Phoenix and Pinal Active Management Areas from Gila River Water Storage, LLC for 622,000 acre-feet of Community CAP water at an aggregate cost of not more than \$42,860,000.

Section 2. Execution of the above-detailed agreements by the Mayor.

PASSED AND ADOPTED by the Mayor and City Council of the City of Chandler, Arizona, this \_\_\_\_\_ day of July, 2016.

ATTEST:

---

CITY CLERK

---

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4957 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_ day of July, 2016, and that a quorum was present thereat.

---

CITY CLERK

APPROVED AS TO FORM:

---

CITY ATTORNEY     *(kb)*



# GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85147

## RESOLUTION GR-109-16

### A RESOLUTION APPROVING THE LEASE AGREEMENT FOR CAP WATER BETWEEN CITY OF CHANDLER AND THE GILA RIVER INDIAN COMMUNITY

**WHEREAS,** the Gila River Indian Community Council (the "Community Council") is governing body of the Gila River Indian Community (the "Community"); and

**WHEREAS,** the Community Council is empowered by Article XV, Section 1(a)(1) and (18) of the Constitution and Bylaws of the Gila River Indian Community to negotiate with the Federal, State and local governments on behalf of the Community and to do such other acts of government or public nature as are not prohibited by applicable laws; and

**WHEREAS,** under the Arizona Water Settlements Act, Public Law 108-451 (118 Stat. 3478), (the "Act") and the Amended Central Arizona Project Water Delivery Contract between the Community and the United States dated May 15, 2006, the Community is entitled to receive up to 311,800 acre-feet per year of water from the Central Arizona Project (the "Community CAP Water"); and

**WHEREAS,** the City of Chandler ("Lessee"), is a municipality organized under the laws of the State of Arizona, with the authority to enter into contracts; and

**WHEREAS,** the Community is entitled to lease Community CAP Water to Lessee on the terms set forth in the attached Lease Agreement for CAP Water Between City of Chandler and the Gila River Indian Community, for the lease of 2,450 acre-feet of Community CAP Water ("Lease Agreement"); and

**WHEREAS,** the Lease Agreement is part of a broader transaction among the Lessee, Gila River Water Storage, LLC ("GRWS"), and the Community in which the Lessee intends to lease Community CAP Water from the Community, exchange reclaimed water for Community CAP Water from the Community, to purchase long term storage credits from GRWS, and contribute funds for water related infrastructure to be developed on the Community's Reservation;

**WHEREAS,** consideration for the Community CAP Water leased under the Lease Agreement was calculated as follows:

1. One thousand two hundred (1,200) acre-feet per year of Community CAP Water at three thousand eight hundred dollars (\$3,800) per acre-foot, for a total amount of four million five hundred sixty thousand dollars (\$4,560,000.00); and

2. One thousand two hundred fifty (1,250) acre-feet per year of Community CAP Water for one thousand two hundred fifty (1,250) acre-feet per year of Pinal AMA long-term storage credits acquired by the Lessee from GRWS, for a total amount of 125,000 acre-feet of Pinal AMA long-term storage credits;

**WHEREAS**, pursuant to §§ 204(b)(2) and 205(a)(2) of the Act the Lease Agreement requires the approval of the Secretary of the Interior; and

**WHEREAS**, the Government & Management Standing Committee and Natural Resources Standing Committee have reviewed the attached Lease Agreement and recommends that Council approve it.

**NOW, THEREFORE, BE IT RESOLVED**, that the Community Council hereby approves the attached Lease Agreement between the Community and Lessee.

**BE IT FURTHER RESOLVED**, that the Community Council hereby approves the limited waiver of sovereign immunity for the exclusive and limited purpose of dispute resolution in the manner provided for in the attached Lease Agreement.

**BE IT FURTHER RESOLVED**, that the Community Council authorizes its legal counsel to make any necessary non-substantive revisions to the Lease Agreement requested by the United States for purposes of approval by the Secretary of the Interior pursuant to §§ 204(b)(2) and 205(a)(2) of the Act.

**BE IT FINALLY RESOLVED**, that the Governor, or in his absence, the Lieutenant Governor, is authorized to take the necessary steps to carry out the intent of this resolution including the authority to sign and execute any documents that may be necessary.

**CERTIFICATION**

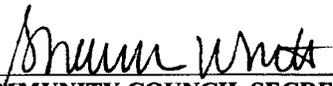
Pursuant to authority contained in Article XV, Section 1, (a) (1), (7), (9), (18), and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the tribe January 22, 1960, and approved by the Secretary of the Interior on March 17, 1960, the foregoing resolution was adopted on the 06<sup>th</sup> of July 2016, at a regular Community Council meeting held in District 3, Sacaton, Arizona at which a quorum of 14 Members were present by a vote of: 13 FOR; 1 OPPOSE; 0 ABSTAIN; 3 ABSENT; 0 VACANCY.

GILA RIVER INDIAN COMMUNITY



GOVERNOR

ATTEST:

  
COMMUNITY COUNCIL SECRETARY

**LEASE AGREEMENT FOR CAP WATER  
BETWEEN  
CITY OF CHANDLER  
AND  
THE GILA RIVER INDIAN COMMUNITY**

**1.0 PREAMBLE**

This agreement providing for the lease of Central Arizona Project water, defined as Leased Water in Subparagraph 4.1, (“Lease Agreement”), is made as of the \_\_\_\_ day of \_\_\_\_\_, 2016, between the Gila River Indian Community (hereinafter “Community”) and the City of Chandler, an Arizona municipality (hereinafter “Lessee”). The Community and Lessee hereinafter are sometimes referred to individually as “Party” and collectively as “Parties”.

**2.0 RECITALS**

**2.1** Under the Arizona Water Settlements Act, Public Law 108-451 (118 Stat. 3478) (the “Act”) and the Amended Central Arizona Project Water Delivery Contract between the Community and the United States dated May 15, 2006, (the “Amended Contract”), the Community is entitled to receive up to 311,800 acre-feet per year of water from the Central Arizona Project (the “Community CAP Water”).

**2.2** The Community is entitled to lease Community CAP Water to Lessee on the terms set forth in this Lease Agreement.

**2.3** Leases of Community CAP Water require approval of the Secretary of the Interior in accordance with Sections 204(b)(2) and 205(a)(2) of the Act.

**2.4** The Community has agreed to enter into this Lease Agreement as partial consideration for the exchange of Community CAP Water and sale of long-term storage credits set forth in the Collateral Agreements, as defined in Subparagraph 3.13. The Community acknowledges that the consideration it receives under this Lease Agreement and under the Collateral Agreements represents fair market value provided that the Lessee fulfills all of its obligations under the Collateral Agreements.

**2.5** This Lease Agreement is part of a broader transaction among the Lessee, Gila River Water Storage, LLC (“GRWS”), and the Community in which the Lessee intends to lease CAP Water from the Community, exchange reclaimed water for CAP Water from the Community, and to purchase long-term storage credits from GRWS in accordance with the terms of this Lease Agreement and the Collateral Agreements, as defined in Subparagraph 3.13. The United States is not a party to this Lease Agreement or the Collateral Agreements nor does it have an approving role in the purchase and sale of long-term storage credits.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Lease Agreement, it is agreed as follows:

**3.0 DEFINITIONS**

**3.1** “**Act**” has the meaning set forth in the Recitals.

**3.2** “**Amended Contract**” has the meaning set forth in the Recitals.

**3.3** “**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.*).

**3.4** “**CAP Contractor**” shall mean a person or entity that has entered into a long-term contract (as that term is used in the CAP Repayment Stipulation, which is defined in the Settlement Agreement in subparagraph 2.35) with the United States for delivery of water through the CAP System.

**3.5** “**CAP Fixed OM&R Charge**” shall mean Fixed OM&R Charge (as that term is defined in the CAP Repayment Stipulation) for the Leased Water.

**3.6** “**CAP Pumping Energy Charge**” shall mean Pumping Energy Charge (as that term is defined in the CAP Repayment Stipulation) for the Leased Water.

**3.7** “**CAP Repayment Contract**” shall mean the contract dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project. The term “CAP Repayment Contract” includes all amendments to and revisions of that contract. This is the same contract referred to in the Act as Contract No. 14-0906-09W-09245, Amendment No. 1.

**3.8** “**CAP Repayment Stipulation**” shall mean the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment Upon the Satisfaction of Conditions, filed in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated Action), United States District Court for the District of Arizona, and the Order dated November 21, 2007, entered therein. This is the same case referred to in the Arizona Water Settlements Act, Public Law 108-451, as No. CIV 95-09625-09TUC-09WDB (EHC), No. CIV 95-091720-09PHX-09EHC (Consolidated Action).

**3.9** “**CAP Subcontractor**” shall mean a person or entity that has entered into a long-term subcontract (as that term is used in the CAP Repayment Stipulation, which is defined in the Settlement Agreement in subparagraph 2.35) with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP System.

**3.10 “CAP Service Area”** 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 Central Arizona Water Conservation District.

**3.11 “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) the pumping plants and appurtenant works of the Central Arizona Project system that are described in (A) through (D), and (F) any extensions of, additions to, or replacements for the features described in (A) through (E).

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

**3.13 “Collateral Agreements”** shall mean the two (2) other agreements among the Lessee, the Community and GRWS, consisting of a Long-Term Storage Credits Purchase-Sale Agreement between the Lessee and the GRWS, and a reclaimed water and CAP Water Exchange Agreement between Lessee and the Community. The United States is not a party to this Lease Agreement or the Collateral Agreements nor does it have an approving role in the purchase and sale of long-term storage credits.

**3.14 “Community CAP Water”** has the meaning set forth in the Recitals.

**3.15 “Force Majeure Events”** means any one or more of the following which prohibits or materially interferes with, delays or alters the performance of the applicable duty under this Lease Agreement: strikes or lockouts; shortages of material (excluding those caused by lack of funds) or labor; acts of the public enemy; confiscation or seizure by any government or public authority; injunction, restraining order or other court order or decree; blockades; insurrections; riots; civil disturbances; epidemics; acts of nature; fires; explosions; nuclear reaction or radiation; radioactive contamination; any other similar cause (excluding those caused by a Party’s lack of funds); and any other event not within the reasonable control of the applicable Party.

**3.16 “Gila River Indian Community” or “Community”** shall mean the governmental entity composed of members of the Pima Tribe and the Maricopa Tribe, which is organized under Section 16 of the Act of June 18, 1934 (25 U.S.C. § 476).

**3.17 “GRWS”** has the meaning set forth in the Recitals.

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

**3.19 “Lease”** when used as a noun, singular word, and capitalized shall mean the provisions of this Lease Agreement that apply only to, or are required to interpret or enforce, the Lease Agreement.

**3.20 “Lease Effective Date”** shall mean the date the Community receives the \$4,560,000 payment in accordance with Subparagraph 4.3.

**3.21 “Leased Water”** has the meaning set forth in Subparagraph 4.1.

**3.22 “Lessee”** is defined in the Preamble.

**3.23 “Lessee’s CAP Subcontract”** shall mean Contract No. 07-XX-30-W0482, dated May 25, 2007, among the Lessee, the United States, and CAWCD.

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

**3.25 “OM&R Costs”** shall mean the sum of the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge.

**3.26 “Operating Agency”** shall mean the entity or entities authorized to assume OM&R responsibility of all or any part of the Transferred Works and approved for that purpose by the Secretary or his designee acting in his behalf. CAWCD is the Operating Agency at the time of execution of this Lease Agreement.

**3.27 “Paragraph”** shall mean a paragraph and its subparts, and “Subparagraph” shall mean just the particular subparagraph which is referenced and any of the subparts of only that particular subparagraph, of this Lease Agreement.

**3.28 “Party” or “Parties”** has the meaning set forth in the Preamble. The United States of America is not a party to this Lease Agreement or the Collateral Agreements.

**3.29 “Reservation”** shall mean land located within the exterior boundaries of the Gila River Indian Reservation created under sections 3 and 4 of the Act of February 28, 1859 (11 Stat. 401, Chapter LXVI), and Executive Orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915. The term “Reservation” includes those lands located in Sections 16 and 36, Township 4 South, Range 4 East, Gila and Salt River Base and Meridian.

**3.30 “Return Flow”** shall mean all agricultural, municipal and industrial (M&I), and miscellaneous waste water, seepage, and ground water which originates or results from water contracted for from the Central Arizona Project, but shall not include any water delivered through the project works for ground water recharge purposes.

**3.31 “Secretary”** shall mean the Secretary of the United States Department of the Interior or the Secretary’s authorized representative or designee for purposes of the approval of this Lease Agreement as required by the Amended Contract and the Act.

**3.32 “Settlement Agreement”** shall mean that agreement entered into as of December 21, 2005, by and among the Community, the United States and other

parties settling specified water rights claims raised by the parties in that certain 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)*.

**3.33 “Transferred Works”** shall mean such facilities of the CAP System or of other construction stages as to which OM&R responsibility is transferred from the United States to the Operating Agency.

**3.34 “United States”** shall mean the United States of America acting (i) as trustee on behalf of the Community; (ii) as owner of the Central Arizona Project; and (iii) in no other capacity.

#### **4.0 LEASE OF WATER**

**4.1 Subject of Lease.** The Community leases to the Lessee two thousand four hundred fifty (2,450) acre-feet per year of Indian Priority Water (the “Leased Water”) subject to the terms and conditions of the Amended Contract except as agreed to herein. The Lessee shall not be subject to amendments to the Amended Contract subsequent to the execution of this Lease Agreement that adversely affect this Lease Agreement unless the Lessee agrees to such amended terms in writing.

**4.2 Term of Lease.** The term of this Lease shall begin on the Lease Effective Date at 12:00 a.m. Mountain Standard Time (MST) and end on the day before the 100<sup>th</sup> anniversary of the Lease Effective Date at 11:59 p.m. MST.

**4.3 Lessee’s Consideration During Term of Lease.** In consideration for the Leased Water during the term of the Lease, the Lessee shall, on or before July 31, 2019, pay to the Community four million five hundred sixty thousand dollars (\$4,560,000.00). The Community will also receive additional consideration under the Collateral Agreements, specifically the transfer of one hundred twenty five thousand (125,000) Pinal Active Management Area (AMA) Credits from GRWS. The United States is not a party nor does it have an approving role in the purchase and sale of long-term storage credits, and the transfer of any long-term storage credits.

**4.4 OM&R Costs.** The Lessee shall pay to the Operating Agency all OM&R Costs for the delivery of the Leased Water in accordance with Lessee’s CAP Subcontract, or, if none, the standard OM&R Costs charged to CAP Subcontractors. Lessee shall indemnify the Community for, from and against any liability or responsibility to pay OM&R Costs charged or assessed by the Operating Agency with respect to the Leased Water during the term of this Lease. The Lessee’s obligation to pay such OM&R Costs shall not begin earlier than the date that the Lessee is entitled to receive the Leased Water under this Lease, but in no event unless and until the Leased Water is scheduled for delivery by the Lessee. Prior to the Lease Effective Date, the Community may use the Leased Water in accordance with the Amended Contract.

**4.5 Other Charges or Payments.** Pursuant to section 205(e) of the Act, neither the Community nor the Lessee 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 6.13 of this Lease Agreement.

**4.6 Delivery of Water.** The United States or the Operating Agency shall deliver the Community's Leased Water to the Lessee as further provided herein. 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 the Lessee would limit deliveries of CAP water to other CAP Contractors, CAP Subcontractors, or Excess CAP Water Contractors to a degree greater than would direct deliveries of such Leased Water to the Reservation; Provided, however, that Excess CAP Water Contracts that are first entered into after the date on which this Lease Agreement has been executed shall not limit such delivery. For purposes of the preceding sentence, an Excess CAP Water Contract for delivery of water within a given reach of the CAP System shall be considered as "first entered into" if the Excess CAP Water Contractor did not hold an Excess CAP Water Contract for the delivery of water within the same reach of the CAP System in any prior year. The United States or the Operating Agency shall deliver the Leased Water to the Lessee in accordance with water delivery schedules provided by the Lessee to the United States and the Operating Agency, and the Operating Agency shall inform the Community of the amount of Leased Water delivered in the previous year. The water ordering procedures contained in the Lessee's CAP Subcontract shall apply to the Lessee's ordering of water under this Lease Agreement, subject to the provisions of this Lease. In no event shall the United States or the Operating Agency be required to deliver to the Lessee under this Lease Agreement, in any one month, a total amount of Leased Water greater than eleven percent (11%) of the Lessee's maximum annual entitlement under this Lease Agreement. Notwithstanding the foregoing, 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, CAP Subcontractors, and Excess CAP Water Contractors as determined by the United States and the Operating Agency, if the Lessee agrees to accept such increased deliveries. These provisions are in addition to the provisions contained in Paragraph 5 of this Lease Agreement.

**4.6.1 Delivery of Water During Times of Shortages.** The quantity of water to be delivered hereunder may be curtailed due to drought or other circumstances resulting in shortages only if, and only for the same period and in the same percentage amount, that deliveries of the Community's Indian Priority Water are curtailed at the same time.

**4.7 Use of Leased Water Outside Reservation.** The Lessee may use or deliver Leased Water for use outside the boundaries of the Reservation and within the boundaries of the Lessee's water service area or may deliver Community CAP water to the storage facilities listed in **Exhibit A**; Provided, however, that any such use or delivery shall be consistent with the geographic limitations of subsection 205(a)(2)(A) of the Act.

**4.8 Conditions Relating to Delivery and Use.** The Lessee shall have the right to use Leased Water and Return Flow for any purpose that is consistent with Arizona law and not expressly prohibited by this Lease Agreement, including supplying such water to customers within its service area 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 the Lessee's CAP Subcontract, deliveries of Leased Water to the Lessee and its use by the Lessee shall be subject to any conditions relating to delivery and use in the Lessee's CAP Subcontract, if any, or if none then in the Amended Contract. The Lessee 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. This provision is in addition to the provisions contained in Paragraph 5 of this Lease Agreement.

**4.9 Quality of Water.** The operation and maintenance of Transferred Works 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. Neither the United States, the Community, nor the Operating Agency warrants the quality of water and are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. The Lessee waives its right to make a claim against the United States, the Operating Agency, the Community, 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 the Lessee pursuant to the provisions of this Lease Agreement shall be delivered at such turnouts on the CAP System as are agreed upon by the Secretary, the Operating Agency, and the Lessee. This provision is in addition to the provisions contained in Paragraph 5 of this Lease Agreement

**4.11 Community's Covenants.** The Community agrees:

(a) To observe and perform all obligations imposed on the Community by the Amended Contract which are not assumed by the Lessee so that the Lessee's rights and duties are not in any way impaired;

(b) Not to execute any other lease of the Community's CAP Water that would impair the Lessee's rights and duties hereunder;

(c) Not to alter or modify the terms of the Amended Contract in such a way as to impair the Lessee's rights hereunder or exercise any right or action permitted by the Amended Contract so as to interfere with or change the rights and obligations of the Lessee hereunder;

(d) Not to terminate or cancel the Amended 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 Community under it; and

(e) To submit this Lease Agreement to the Department of the Interior for its review and approval promptly upon its execution by both Parties.

**4.12 Assignment of Interest in Leased Water.** The Lessee 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 Community and the Secretary. Provided, however, approval is hereby granted by the Secretary and the Community for the Lessee, if the Lessee has paid the consideration specified in this Lease Agreement, to assign all or any part of the Lessee's interest in Leased Water under this Lease Agreement to its successor in interest to provide service within the boundaries of its existing or future service area.

**4.13 Allocation and Repayment of CAP Costs.** Pursuant to Section 204(d) of the Act, for the purposes of determining the allocation and repayment of costs of any stages of the CAP constructed after December 10, 2004, the costs associated with the delivery of Leased Water shall be non-reimbursable and shall be excluded from the repayment obligation of Operating Agency. Pursuant to Section 205(a)(7) of the Act, the costs associated with the construction of the CAP System allocable to the Community shall be non-reimbursable and shall be excluded from the repayment obligation of the Community. Pursuant to Section 205(a)(8) of the Act, no CAP water service capital charges shall be due or payable for the Leased Water.

## **5.0 CONFORMITY WITH SETTLEMENT AGREEMENT**

The parties intend that this Lease Agreement shall be construed in a manner that is consistent with the requirements of paragraph 21 of the Settlement Agreement. In the event of any irreconcilable conflict between the stated provisions of this Lease Agreement and the requirements of paragraph 21 of the Settlement Agreement, the requirements of paragraph 21 of the Settlement Agreement shall prevail. The remaining Subparagraphs of this Paragraph are hereby added in conformance with paragraph 21 of the Settlement Agreement. In addition to the provisions contained in Subparagraphs 4.6, 4.8, and 4.10 of this Lease Agreement, delivery and use of water under this Lease Agreement is conditioned on the following, and the Lessee hereby agrees to the following:

### **5.1 Conditions Relating to Delivery and Use.**

(a) All uses of Project Water and Return Flow shall be consistent with Arizona water law unless such law is inconsistent with the Congressional directives applicable to the Central Arizona Project.

(b) The system or systems through which water for Agricultural, M&I (including underground storage), and Miscellaneous purposes is conveyed after delivery to the Lessee shall consist of pipelines, canals, distribution systems, or other conduits

provided and maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses.

(c) The Lessee shall not pump, or within its legal authority, permit others to pump groundwater from within the exterior boundaries of the Lessee's service area, which has been delineated on a map filed with the CAWCD and approved by CAWCD and the Secretary, for use outside of said service area unless such pumping is permitted under Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time, and the Secretary, Operating Agency, and the Lessee shall agree, or shall have previously agreed, that a surplus of groundwater exists and drainage is or was required; Provided, however, that such pumping may be approved by the Secretary and Operating Agency, and approval shall not be unreasonably withheld, if such pumping is in accord with the Basin Project Act and upon submittal by the Lessee of a written certification from the Arizona Department of Water Resources or its successor agency that the pumping and transportation of groundwater is in accord with Title 45, Chapter 2, Arizona Revised Statutes, as it may be amended from time to time.

**5.2 Points of Delivery–Measurement and Responsibility for Distribution of Water.**

(a) Unless the United States and the Lessee agree by contract to the contrary, the Lessee shall construct and install, at its sole cost and expense, connection facilities required to take and convey the water from the turnouts on the CAP System to the Lessee's service area or a storage facility listed in **Exhibit A**. The Lessee shall furnish, for approval of the Secretary, drawings showing the construction to be performed by the Lessee within the CAP System right-of-way six (6) months before starting said construction. The facilities may be installed, operated, and maintained on the CAP System right-of-way subject to such reasonable restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by the Secretary.

(b) All water delivered from the CAP System shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the Operating Agency. Upon the request of the Lessee, the Community, or the Operating Agency, the accuracy of such measurements shall be investigated by the United States or the Operating Agency, Community, and Lessee, and any errors which may be mutually determined to have occurred therein shall be adjusted; Provided, That in the event the parties cannot agree on the required adjustment, the United States' determination shall be conclusive.

(c) Neither the United States, the Community, nor the Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project Water beyond the delivery point(s) agreed to pursuant to Subparagraph 4.10. The Lessee shall hold the United States, the Community, and the Operating Agency harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the Lessee's control, carriage, handling,

use, disposal, or distribution of such water beyond said delivery point(s).

**5.3 Temporary Reductions.** In addition to the right of the United States under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or reduce the amount of water to be delivered, the United States or the Operating Agency may, after consultation with the Lessee, temporarily discontinue or reduce the quantity of water to be furnished to the Lessee as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the furnishing of water to the Lessee, but so far as feasible the United States or the Operating Agency shall coordinate any such discontinuance or reduction with the Lessee and shall give the Lessee due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Neither the United States, its officers, agents, and employees, nor the Operating Agency, its officers, agents, and employees, shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to the Lessee of less water than what has been paid for, the Lessee shall be entitled to be reimbursed for the appropriate proportion of such payment.

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

## **6.0 EVENTS OF DEFAULT**

**6.1 Failure to Fulfill Obligations.** Any failure by either Party to fulfill its obligations under this Lease or the Collateral Agreements and not cure them within the time set forth in Subparagraph 6.1.1 shall constitute a default of the Defaulting Party's obligations under this Lease Agreement and the Collateral Agreements.

**6.1.1 Notice of Default and Cure Period.** In the event of one of the Parties' default, as defined in Subparagraph 6.1, the Non-Defaulting Party shall provide written notice ("Notice of Default") to the Defaulting Party specifying the default and demanding that the default be cured within ninety (90) days of the notice. The Non-Defaulting Party shall simultaneously provide a copy of the Notice of Default to the United States. Notice shall be given in the manner and to the officers specified in Subparagraph 8.4. The Notice of Default shall specifically describe the default and how the Defaulting Party can cure the default, which amount shall be the sum of all payments due the Non-Defaulting Party that should have been paid, but were not paid ("Default Amount"). The purpose of this Subparagraph is to put the Defaulting Party 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.

**6.1.2 Defaulting Party's Failure to Cure.** Except for Lessee's failure to make payment addressed in Subparagraph 6.1.3, if the Defaulting Party fails to cure its default within the time-period set forth in Subparagraph 6.1.1, the Non-Defaulting Party may enforce this Lease or any of the Collateral Agreements by the remedy of specific performance of any Lease or Collateral Agreement provisions.

**6.1.3 Lessee's Non-Payment.** For a period of ninety (90) days after receiving a Notice of Default for failure to make payment the Lessee shall have the right to cure such default by tendering the Default Amount to the Community 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"). If the Lessee fails to cure its default within the time-period set forth in this Subparagraph 6.1.3, the Lessee's right to the Leased Water shall be forfeited.

## **7.0 TERMINATION AND SURRENDER OF WATER**

**7.1 Voluntary Termination of this Lease Agreement.** The Lessee may terminate this Lease Agreement at any time by submitting written notice to the Community of its decision to terminate at least one year prior to the time that it intends the Lease Agreement to be terminated. The Lessee shall simultaneously provide the United States a copy of any such notice of decision to terminate. Such notice is irrevocable except upon the Community's agreement that the Lessee may withdraw its notice. If the Lessee terminates this Lease Agreement, all sums paid by the Lessee to the Community under this Lease Agreement prior to the date of termination shall remain the property of the Community and shall be non-refundable to the Lessee.

**7.2 Voluntary Surrender of a Portion of the Leased Water.** The Lessee 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 Community of its decision to surrender such interest at least one year prior to the time that it intends such surrender to be effective. If the Lessee surrenders its interest in all or any portion of the Leased Water, all sums paid by the Lessee to the Community for such water prior to the date of surrender shall remain the property of the Community and shall be non-refundable to the Lessee. All portions of the Lease Agreement shall remain in effect for all the portions of the Leased Water that are not surrendered.

**7.3 Failure to Pay.** In the event the Lessee fails to cure a default of non-payment as specified in Subparagraph 6.1.3, this Lease Agreement shall terminate without notice by or to any Party and shall be null and void.

**7.4 Failure to Receive Necessary Approvals.** In the event the Parties fail to receive any Federal or state approvals that are necessary to effectuate this Lease Agreement and any of the Collateral Agreements by June 30, 2019, this Lease Agreement

shall terminate without notice by or to any party and shall be null and void. In the event the Lease Agreement is terminated pursuant to this Subparagraph 7.4, the Community shall refund, or cause GRWS to refund as the case may be, any payments it has received from Lessee as consideration for the Leased Water under this Lease or any one of the Collateral Agreements.

## **8.0 GENERAL PROVISIONS**

**8.1 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, the Lessee's entitlement to Leased Water under this Lease Agreement is determined to be invalid by a final judgment entered over the opposition of the Lessee with the result that the Lease Agreement is deemed null and void, the Community shall refund any payments it has received from Lessee as consideration for the Leased Water under this or any one of the Collateral Agreements.

**8.2 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.

**8.3 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.

**8.4 Notice.** Any notice to be given or payment to be made under this Lease Agreement shall be properly given or made when received by all of the officers designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows to all of the officers designated below (or addressed to such other person and/or address as the entity to receive such notice shall have designated by written notice given as required by this Section 8.4):

- (a) As to the United States:
  - The Secretary of the Interior  
Department of the Interior  
1849 C Street, N.W., Mailstop 4100-MIB  
Washington, D.C. 20240
  - Regional Director  
Western Region Office  
Bureau of Indian Affairs  
2600 N. Central Avenue, 4<sup>th</sup> floor  
Phoenix, Arizona 85004
  - Regional Director  
Bureau of Reclamation  
Lower Colorado Region  
P.O. Box 61470  
Boulder City, Nevada 89006-1470

(b) As to the Community:

Governor  
Gila River Indian Community  
P.O. Box 97  
Sacaton, Arizona 85247

With copies to:

Linus Everling  
General Counsel  
Gila River Indian Community  
P.O. Box 97  
Sacaton, Arizona 85247

Donald R. Pongrace  
Akin Gump Strauss Hauer & Feld LLP  
1333 New Hampshire Avenue, NW  
Washington, D.C. 20036

(c) As to the Lessee:

City of Chandler  
Director of Municipal Utilities Department  
Post Office Box 4008, Mailstop 404  
Chandler, Arizona 85244-4008

With a copy to:

Chandler City Attorney  
Chandler City Attorney Office  
Post Office Box 4008, Mailstop 602  
Chandler, Arizona 85244-4008

**8.5 Governing Law.** This Lease Agreement shall be governed by Federal law and, if and to the extent applicable, the laws of the State of Arizona. Disputes arising between the Parties with the respect to this Lease Agreement shall be resolved in accordance with **Exhibit B** (Dispute Resolution) attached hereto, which is incorporated here by this reference as if fully set forth and is acknowledged and agreed to by the Parties.

**8.6 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.

**8.7 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.

**8.8 Construction and Effect.**

**8.8.1** This Lease Agreement and each of its provisions are to be construed fairly and reasonably and not strictly for or against any Party.

**8.8.2** 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.

**8.8.3** When used herein, the terms “include” or “including” shall mean without limitation by reason of the enumeration.

**8.8.4** All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

**8.8.5** The term "person" shall include an individual, corporation, partnership, trust, estate, or any other duly formed entity as well as a natural person.

**8.8.6** If the last day of any time period stated herein should fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

**8.8.7** If a cross-reference within any provision cites a particular section or paragraph number of this Lease Agreement, it shall be a reference to the referred section or paragraph and its subparts.

**8.8.8** The Parties intend that this Lease Agreement and the Collateral Agreements be construed harmoniously in order to give full effect to the intentions of the Parties as reflected in this Lease and the Collateral Agreements. In the event of any conflict or ambiguity arising between this Lease Agreement and the Collateral Agreements, the terms and conditions of this Lease Agreement will control over the Collateral Agreement.

**8.8.9 Recitals, Exhibits.** The Recitals set forth in Paragraph 2.0 of this Lease Agreement are incorporated herein by reference and form a part of this Lease Agreement. The Parties agree that all references to this Lease Agreement include all Exhibits designated in and attached to this Lease Agreement, such Exhibits being incorporated into and made an integral part of this Lease Agreement for all purposes.

**8.9 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 therefrom. This shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

**8.10 Third Party Beneficiaries.** There shall be no third party beneficiaries of this Lease Agreement or any provision hereof.

**8.11 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.

**8.12 Subsequent Documents.** Each of the Parties hereto shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Lease Agreement.

**8.13 Renegotiate.** The parties to this Lease Agreement agree that the Community and the Lessee may renegotiate this Lease Agreement at any time during its term, as provided in Subparagraph 8.5 of the Settlement Agreement. Provided, however, that any such renegotiated Agreement shall not be effective unless and until approved by the Secretary.

**8.14 Force Majeure.** If either Party is delayed or prevented from the performance of any duty or obligation under this Lease or the Collateral Agreements by reason of a Force Majeure Event, then the performance of such duty or obligation shall be excused for the period of the delay, and the period for the performance by such Party of any such duty or obligation shall be extended for a period equivalent to the period of such delay. The Party subject to any Force Majeure Event shall provide written notice to the other Party as soon as reasonably practicable.

(Signatures follow)

**IN WITNESS WHEREOF**, these presents are hereby signed and agreed to by the Parties hereto.

**LESSEE**

**CITY OF CHANDLER**, an Arizona municipality

**COMMUNITY**

**GILA RIVER INDIAN COMMUNITY**, a federally recognized Indian tribe

By: \_\_\_\_\_  
Jay Tibshraeny  
Mayor of City of Chandler

By: \_\_\_\_\_  
Stephen R. Lewis  
Governor

DATE: \_\_\_\_\_, 2016

DATE: \_\_\_\_\_, 2016

Attest:

Attest:

\_\_\_\_\_  
Marla Paddock  
City Clerk

\_\_\_\_\_  
Council Secretary

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Kay Bigelow  
City Attorney

\_\_\_\_\_  
Linus Everling  
General Counsel

(United States of America signatures follow)

**Pursuant to Sections 204(b)(2) and 205(a)(2) of Public Law 108-451, the foregoing Lease Agreement for CAP Water between City of Chandler and the Gila River Indian Community is hereby approved.**

**THE UNITED STATES OF AMERICA**

**BUREAU OF RECLAMATION**

By \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**THE UNITED STATES OF AMERICA**

**BUREAU OF INDIAN AFFAIRS**

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A

<b>City of Chandler Permitted Underground Storage Facilities for CAP Deliveries</b>	
<b>Facility Name</b>	<b>Permit Number</b>
Granite Reef Underground Storage Facility	71-516371
Superstition Mountain Recharge Project	71-207702
New River Agua Fria Water Storage Project	71-588558
Tonopah Desert Recharge Project	71-593305
Agua Fria Recharge Project Managed Facility	71-569775
Agua Fria Recharge Project Constructed Facility	71-569776
Hieroglyphic Mountain Recharge Project	71-584466

## **EXHIBIT B**

### **DISPUTE RESOLUTION**

The Parties agree that the following procedures shall govern the resolution of disputes arising under this Lease Agreement.

1. **Amicable resolution.** The Parties shall attempt to resolve all claims, disputes, controversies or other matters in question between the Parties arising out of, or relating to, this Lease Agreement (“Dispute”) promptly, equitably and in a good faith manner.
2. **Mediation.** Prior to submitting any Dispute to arbitration the Parties may, but are not required to, submit any Dispute that cannot be resolved between the Parties. The mediation, if any, shall be conducted by a mediator jointly selected by the Parties. The mediator’s deliberations are confidential and shall not be disclosed to third parties. The mediator shall be disqualified as a witness, consultant, or expert for either Party in any Dispute. If mediation does not successfully resolve a Dispute, each Party shall be free to submit the Dispute to arbitration pursuant to this Exhibit B. Neither Party is required to submit any Dispute to mediation in order to proceed with arbitration as provided herein.
3. **Submission to arbitration.** Either Party may submit any Dispute that cannot be resolved between the Parties to arbitration by written notice to the other Party.
4. **Notice of arbitration.** The notice for arbitration shall specify with particularity the nature of the Dispute, the particular provisions of this Lease Agreement that are at issue, and the proposed relief sought by the Party seeking arbitration.
5. **Appointment of arbitrators.** The arbitration shall be conducted before a panel composed of three (3) arbitrators, each of whom shall be a person familiar, by profession or experience, with the issues in controversy. Within ten (10) days after delivery of a notice of arbitration, each Party shall appoint an arbitrator, obtain its appointee’s acceptance of such appointment and deliver written notification of such appointment and acceptance to the other Party. Within ten (10) days of being appointed, the two (2) Party-appointed arbitrators shall jointly appoint the third (who shall be the chairperson), and shall obtain the acceptance of such appointment and deliver written notification of such appointment and acceptance to the Parties. If an arbitrator is not timely appointed as provided herein, a Party may petition a court of competent jurisdiction for the appointment of an arbitrator.
6. **Disqualification of an arbitrator.** No person may serve as an arbitrator if, because of employment or other relationship with a Party, the nature of the matter to be arbitrated, or otherwise, such person could not serve as a judge in such matter if such person were a judge.
7. **Rules of arbitration.** The arbitration shall be governed by the Commercial Arbitration Rules (“CAR”) of the American Arbitration Association (“AAA”) in effect as of the date of the notice in section 4 of this Exhibit B; however, the parties agree that, while the CAR apply to this matter, the AAA shall not administer or in any manner be involved in the arbitration. Any administrative functions that would normally be performed under the CAR by the AAA will be undertaken by the neutral arbitrator. In the event of any conflict between this Exhibit B and the CAR, the terms of Exhibit B will govern. The parties further agree that any waiver of sovereign immunity by the Community shall be governed solely by section 15 of this Exhibit B. The Parties agree that the arbitrators may utilize the disclosure and discovery provisions of the Arizona Rules of Civil Procedure and the Arizona Rules of Evidence as may be necessary for the arbitration.
8. **Time.** Time is of the essence in the resolution of Disputes pursuant to this Exhibit B. All deadlines established herein shall be strictly enforced by the arbitrators and the Parties.

9. **Arbitration hearing.** The arbitrators may, in their sole discretion determine whether a hearing would assist them in rendering a fair and equitable decision. In any event, such hearing, if held, must be held within 180 calendar days after written notice of the appointment of the third arbitrator has been received by the Parties.

10. **Conduct of arbitration.** The arbitrators shall comply with and follow the CAR with respect to impartiality and independence, and shall render an independent, impartial review of the claim(s) presented, and each arbitrator shall act independently and shall not be either Party's representative. The arbitrators' deliberations are confidential and shall not be disclosed to third parties. Each arbitrator shall be disqualified as a witness, consultant, or expert for either Party in any Dispute. No written communication shall be permitted between the arbitrators and a Party without the other Party receiving a copy of such written communication, and no oral communications shall take place without the other Party being present.

11. **Arbitration award.** The arbitrators shall render a reasoned decision and award, by majority vote, no later than 21 calendar days after conclusion of the arbitration hearing, if any, or within 180 days after written notice of the appointment of the third arbitrator has been received by the Parties if no arbitration hearing is held.

12. **Arbitration remedies.** The sole remedy available to the parties, and which may be made by the arbitrators, is specific performance of the provisions of this Lease Agreement and the arbitrators may not seek to impose damages on either Party as a remedy in such arbitration. The provisions of this Lease Agreement shall be binding on the arbitrators and nothing in this Lease Agreement shall be construed to allow the arbitrators to modify this Lease Agreement in any way.

13. **Enforcement of arbitration award.** The arbitrators' decision will be final and binding on the Parties and will not be subject to appeal. The prevailing Party in such arbitration may seek enforcement of such award in any court of competent jurisdiction as provided in the CAR. Each Party agrees to submit to the jurisdiction of any such court solely for purposes of the enforcement of such arbitration decision and for no other purpose.

14. **Costs of arbitration.** The costs of the arbitration, as documented by invoices submitted to the Parties by the arbitrators, shall be shared equally by the Parties, but the Parties shall bear their own costs and attorneys' fees associated with their participation in the arbitration.

15. **Limited waiver of sovereign immunity.** The Community hereby provides a strictly limited waiver of its sovereign immunity in any court of competent jurisdiction for the sole and exclusive purpose of enforcement of an arbitration award rendered pursuant to this Exhibit B and for no other purpose. The waiver of sovereign immunity provided by the Community extends solely to Lessee and to no other person or party.



# GILA RIVER INDIAN COMMUNITY

## SACATON, AZ 85147

### RESOLUTION GR-110-16

#### **A RESOLUTION APPROVING THE RECLAIMED WATER EXCHANGE AGREEMENT BETWEEN THE CITY OF CHANDLER AND THE GILA RIVER INDIAN COMMUNITY**

**WHEREAS**, the Gila River Indian Community Council (the "Community Council") is governing body of the Gila River Indian Community (the "Community"); and

**WHEREAS**, the Community Council is empowered by Article XV, Section 1(a)(1) and (18) of the Constitution and Bylaws of the Gila River Indian Community to negotiate with the Federal, State and local governments on behalf of the Community and to do such other acts of government or public nature as are not prohibited by applicable laws; and

**WHEREAS**, under the Arizona Water Settlements Act, Public Law 108-451 (118 Stat. 3478), (the "Act") and the Amended Central Arizona Project Water Delivery Contract between the Community and the United States dated May 15, 2006, the Community is entitled to receive up to 311,800 acre-feet per year of water from the Central Arizona Project (the "Community CAP Water"); and

**WHEREAS**, the City of Chandler ("Chandler"), is a municipality organized under the laws of the State of Arizona, with the authority to enter into contracts; and

**WHEREAS**, the Community is entitled to exchange Community CAP Water with Chandler on the terms set forth in the attached Reclaimed Water Exchange Agreement Between the City of Chandler and the Gila River Indian Community, for the exchanges of 4,225 acre-feet of Chandler A+ reclaimed water for 3,380 acre-feet of Community CAP Water ("Exchange Agreement"); and

**WHEREAS**, the Exchange Agreement is part of a broader transaction among the Chandler, Gila River Water Storage, LLC ("GRWS"), and the Community in which Chandler intends to lease Community CAP Water from the Community, exchange reclaimed water for Community CAP Water from the Community, to purchase long term storage credits from GRWS, and contribute funds for water related infrastructure to be developed on the Community's Reservation;

**WHEREAS**, pursuant to §§ 204(b)(2) and 205(a)(2) of the Act the Exchange Agreement requires the approval of the Secretary of the Interior; and

**WHEREAS**, the Government & Management Standing Committee and Natural Resources Standing Committee have reviewed the attached Exchange Agreement and recommends that Council approve it.

**NOW, THEREFORE, BE IT RESOLVED**, that the Community Council hereby approves the attached Exchange Agreement between the Community and Chandler.

**BE IT FURTHER RESOLVED**, that the Community Council hereby approves the limited waiver of sovereign immunity for the exclusive and limited purpose of dispute resolution in the manner provided for in the attached Exchange Agreement.

**BE IT FURTHER RESOLVED**, that the Community Council authorizes its legal counsel to make any necessary non-substantive revisions to the Lease Agreement requested by the United States for purposes of approval by the Secretary of the Interior pursuant to §§ 204(b)(2) and 205(a)(2) of the Act.

**BE IT FINALLY RESOLVED**, that the Governor, or in his absence, the Lieutenant Governor, is authorized to take the necessary steps to carry out the intent of this resolution including the authority to sign and execute any documents that may be necessary.

**CERTIFICATION**

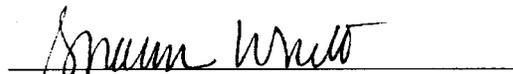
Pursuant to authority contained in Article XV, Section 1, (a) (1), (7), (9), (18), and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the tribe January 22, 1960, and approved by the Secretary of the Interior on March 17, 1960, the foregoing resolution was adopted on the 06<sup>th</sup> of July 2016, at a regular Community Council meeting held in District 3, Sacaton, Arizona at which a quorum of 14 Members were present by a vote of: 11 FOR; 2 OPPOSE; 1 ABSTAIN; 3 ABSENT; 0 VACANCY.

GILA RIVER INDIAN COMMUNITY



GOVERNOR

ATTEST:

  
COMMUNITY COUNCIL SECRETARY

**RECLAIMED WATER EXCHANGE AGREEMENT  
BETWEEN  
THE CITY OF CHANDLER  
AND THE  
GILA RIVER INDIAN COMMUNITY**

**1.0 PREAMBLE**

This Reclaimed Water Exchange Agreement (“Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016, between City of Chandler, an Arizona municipal corporation (“Chandler”) and the Gila River Indian Community, a federally recognized Indian tribe (“Community”). Chandler and the Community are hereinafter sometimes referred to individually as “Party” and collectively as “Parties”. The United States is not a party to this Agreement.

**2.0 RECITALS**

2.1 The Parties entered into a Settlement Agreement, along with other parties, to settle specified water rights claims raised by the parties in the Gila River Adjudication Proceedings, which was approved by Congress under the Arizona Water Settlements Act, Public Law 108-451 (118 Stat. 3478) (the “Act”).

2.2 Exhibit 18.1 to the Settlement Agreement, the Reclaimed Water Exchange Agreement Among the Cities of Mesa and Chandler, the Community and the United States (“Settlement Exchange Agreement”) (attached as **Exhibit A**), provides for, among other things, the exchange of Chandler Exchange Reclaimed Water for Community CAP Exchange Water as between Chandler and the Community, as those terms are defined in Subparagraphs 3.1.10 and 3.1.14 in the Settlement Exchange Agreement.

2.3 The Parties desire to enter into this Agreement to allow for the exchange of Additional Chandler Exchange Reclaimed Water for Additional Community CAP Exchange Water, as those terms are defined in Subsections 3.3 and 3.4 respectively.

2.4 The Parties wish to incorporate the same water quality standards, monitoring procedures, contingency measures and other obligations related to maintaining water quality standards set forth in Paragraph 4.0 of the Settlement Exchange Agreement into this Agreement.

2.5 Exchanges of Additional Community CAP Exchange Water require approval of the Secretary of the Interior in accordance with Sections 204(b)(2) and 205(a)(2) of the Act.

2.6 This Agreement is part of a broader transaction among Chandler, Gila River Water Storage, LLC (“GRWS”), and the Community in which Chandler intends to exchange Additional Chandler Exchange Reclaimed Water for Additional Community CAP Water and sell long-term storage credits as set forth in the Collateral Agreements defined in Subsection 3.14. The United States is not a party to this Agreement or the Collateral Agreements nor does it have an approving role in the purchase and sale of long-term storage credits.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, it is agreed as follows:

### **3.0 DEFINITIONS**

Capitalized terms used in this Agreement that are not expressly defined herein shall have the same meaning as in the Settlement Exchange Agreement. The following terms shall have the following meanings when capitalized and used in this Agreement.

3.1 **“A+ Reclaimed Water Quality Standards”** shall mean those reclaimed water quality standards set forth in Table 1 of Subparagraph 4.1.1 of the Settlement Exchange Agreement.

3.2 **“Act”** has the meaning set forth in Subsection 2.1.

3.3 **“Additional Chandler Exchange Reclaimed Water”** shall mean the Reclaimed Water provided to the Community in exchange for Additional Community CAP Exchange Water under the terms of this Agreement.

3.4 **“Additional Community CAP Exchange Water”** shall mean Community CAP Indian Priority Water that the Community provides to Chandler in exchange for Additional Chandler Exchange Reclaimed Water under the terms of this Agreement.

3.5 **“Authorized Representative”** shall mean the representatives of the Community and Chandler appointed pursuant to Subparagraph 7.6 of the Settlement Exchange Agreement.

3.6 **“CAP Indian Priority Water”** shall mean water having an Indian delivery priority from the Central Arizona Project the Community is entitled to receive under the Amended Central Arizona Project Water Delivery Contract between the Community and the United States dated May 15, 2006.

3.7 **“CAP Turnout”** shall mean those locations where water is diverted from the CAP Aqueduct for delivery to Chandler under the terms of Chandler’s CAP Delivery Subcontract.

3.8 **“Chandler”** has the meaning set forth in Section 1.0.

3.9 **“Chandler’s CAP Delivery Subcontract”** shall mean that contract between the United States, Central Arizona Water Conservation District, and the City of Chandler for Water Services, Central Arizona Project, dated December 26, 1984, as amended.

3.10 **“Chandler Pipeline”** shall mean the pipeline located on the Reservation along old Price Road used to Deliver Chandler Reclaimed Water to the Community.

3.11 **“Chandler Point of Delivery”** shall mean that location where Chandler Reclaimed Water first crosses the Reservation boundary through or by way of water delivery facilities.

3.12 **“Chandler Reclaimed Water”** shall mean Additional Chandler Exchange Water as defined in Subsection 3.3 in this Agreement, and Chandler Exchange Reclaimed Water and Chandler Contributed Reclaimed Water as those terms are defined in the Settlement Exchange Agreement.

3.13 **“Community”** has the meaning set forth in Section 1.0.

3.14 **“Collateral Agreements”** shall mean two (2) other agreements among Chandler, the Community and GRWS, consisting of a Long-Term Storage Credits Purchase-Sale Agreement between Chandler and the GRWS, and a CAP Water Lease Agreement between Chandler and the Community. The United States is not a party to this Agreement or the Collateral Agreements nor does it have an approving role in the purchase and sale of long-term storage credits.

3.15 **“Deliver”, “Delivered”, “Deliveries”, “Delivering” or “Delivery”** shall mean (1) the transporting of Additional Chandler Reclaimed Water to the Chandler Point of Delivery, or (2) the transportation or conveyance of Additional Chandler Reclaimed Water as may be agreed upon in writing by the Parties.

3.16 **“Diurnal Flow”** shall mean the daily or seasonal fluctuation in the quantity of Reclaimed Water produced by a Plant that is caused by the daily or seasonal variance in the quantity of wastewater flowing into such Plant.

3.17 **“Effective Date”** has the meaning set forth in Subsection 5.1.

3.18 **“Exceed”, “Exceedance”, or “Exceeded”**, shall mean that (1) monitoring conducted pursuant to Subparagraph 4.1 of the Settlement Exchange Agreement demonstrates that the Reclaimed Water produced by a Plant fails to satisfy the applicable A+ Reclaimed Water Quality Standards for one or more Parameters, or (2) monitoring required pursuant to Subparagraph 4.1 of the Settlement Exchange Agreement has not been conducted, or (3) such status is otherwise established pursuant to Subparagraph 4.1.7 of the Settlement Exchange Agreement relating to the failure to take a routine sample.

3.19 **“Force Majeure” or “Force Majeure Event”** shall mean a cause beyond the control of the Parties, such as failure or threat of failure of facilities, flood, earthquake, storm, fire, lightening and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities and restraint by court order or public authority, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome.

3.20 **“Non-Attainment”** shall mean that: (1) a Plant producing Reclaimed Water to be Delivered fails to satisfy one or more of the A+ Reclaimed Water Quality Standards for any Parameter as established by verification sampling and, if applicable, fails to satisfy the contingency measures set forth in Subparagraphs 4.3.3, 4.3.4 or 4.3.5, of the Settlement Exchange Agreement or (2) the monitoring required pursuant to Subparagraph 4.2 of the Settlement Exchange Agreement has not been conducted, or (3) such status is otherwise

established pursuant to Subparagraph 4.1.7 of the Settlement Exchange Agreement relating to the failure to take a routine sample.

3.21 **“OM&R”** shall mean all activities required for the efficient Delivery and acceptance of water pursuant to this Agreement, including, but not limited to, dry-ups, the care, operation, maintenance, repair and replacement of canals, laterals, drains, pumps, pipes and appurtenances.

3.22 **“Party” or “Parties”** have the meaning set forth in the Preamble. The United States of America is not a Party to this Agreement or the Collateral Agreements.

3.23 **“Plant” or “Plants”** shall mean a wastewater treatment facility or reverse osmosis facility that produces Chandler Reclaimed Water and the infrastructure to convey such Reclaimed Water for Delivery.

3.24 **“Reclaimed Water”** shall mean Effluent that has been treated and produced by a Plant.

3.25 **“Settlement Agreement”** shall mean that agreement entered into among and between the Parties, and other parties to that agreement settling specified water rights claims raised by the parties in the Gila River Adjudication Proceedings.

3.26 **“Settlement Exchange Agreement”** has the meaning set forth in Subparagraph 2.2.

3.27 **“Termination Date”** has the meaning set forth in Subparagraph 5.2.

3.28 **“Year”** shall mean a calendar year except where specifically otherwise provided.

#### **4.0 WATER QUALITY STANDARDS**

4.1 Additional Chandler Exchange Reclaimed Water shall be monitored and shall meet the A+ Reclaimed Water Quality Standards.

4.2 For the Additional Chandler Exchange Reclaimed Water delivered to the Community under this Agreement, the water quality standards, monitoring procedures, contingency measures and other obligations related to maintaining A+ Reclaimed Water Quality Standards shall be the same as those set forth in Paragraph 4.0 of the Settlement Exchange Agreement, which are incorporated here by this reference as if fully set forth and is acknowledged and agreed to by the Parties.

#### **5.0 TERM OF AGREEMENT**

5.1 In accordance with the procedures set forth in Section 6.0, on or before September 1, 2018, the Authorized Representative of Chandler and the Authorized Representative of the Community shall agree on a schedule, on a month-by-month basis, for (i) Chandler’s intended Delivery of Additional Chandler Reclaimed Water for 2019 and (ii) Community’s intended

Delivery of Additional Community CAP Exchange Water for 2019 with the first Deliveries beginning on January 1, 2019 (“Effective Date”).

5.2 The term of this Agreement shall begin on the Effective Date and end on the day before the 100<sup>th</sup> anniversary of the Effective Date at 11:59 p.m. Mountain Standard Time (“Termination Date”). Chandler may elect to advance the Termination Date by fifty (50) years, provided Chandler provides written notice of its intention to advance the Termination Date to the Community not less than one hundred eighty (180) days before the 50<sup>th</sup> anniversary of the Effective Date of this Agreement. Notice shall be given in the manner and to the officers specified in Subsection 9.4. In the event Chandler elects to advance the Termination Date, the term of the Agreement shall begin on the Effective Date and end on the day before the 50<sup>th</sup> anniversary of the Effective Date at 11:59 p.m. Mountain Standard Time.

## **6.0 DELIVERY AND ACCEPTANCE OF ADDITIONAL CHANDLER RECLAIMED WATER AND DELIVERY OF ADDITIONAL COMMUNITY CAP EXCHANGE WATER**

### **6.1 Exchange of Water.**

6.1.1 Beginning in January 1, 2019, and each Year after during the term of this Agreement, Chandler shall make available for Delivery, and the Community shall accept Delivery of four thousand four hundred (4,400) acre-feet of Additional Chandler Exchange Reclaimed Water in accordance with the terms and conditions of this Agreement.

6.1.2 Chandler shall be entitled to eight tenths (0.8) of an acre-foot of Additional Community CAP Exchange Water for every one (1.0) acre-foot of Additional Chandler Exchange Reclaimed Water that it schedules for Delivery in accordance with Subsection 6.3, up to the limits set forth in Subsection 6.1.1.

6.1.3 If, at any time, Chandler has made Additional Chandler Exchange Reclaimed Water available for Delivery and the Community is required to accept such Delivery in accordance with the terms and conditions of this Agreement, but does not do so, Chandler shall be entitled to receive credit in accordance with Subsection 6.4.3.1.

### **6.2 Meetings.**

6.2.1 On or before August 1 of the first full Year during which Chandler is obligated to Deliver under this Agreement and in each Year thereafter the Authorized Representatives of the Community and Chandler shall meet to discuss the following:

6.2.1.1 Operational adjustments necessary to ensure that Chandler Delivers, and the Community accepts Delivery of, the quantity of Additional Chandler Reclaimed Water that Chandler is obligated to Deliver in the then current Year;

6.2.1.2 Anticipated dry-up schedules and any other planned OM&R activities for the balance of the then current Year and for the following Year that may limit their ability to perform under this Agreement. Chandler and the

Community shall use their best efforts to coordinate such activities to minimize the disruption to the exchange. If these efforts to coordinate fail and the Community's water delivery system will be under repair when Chandler is otherwise able to Deliver, the Authorized Representative of the Community may accept Delivery by such other means as are available;

6.2.1.3 Whether the quantity of Additional Community CAP Exchange Water to be made available to Chandler during the following Year may be reduced in accordance with Subsection 6.7;

6.2.1.4 Whether the Community anticipates that it will be unable to schedule sufficient quantities of blending water to satisfy the requirements of Subsection 6.8;

6.2.1.5 The amount of Additional Chandler Reclaimed Water that will be made available for Delivery during the following Year; and

6.2.1.6 The forecast of the quantity of Additional Chandler Reclaimed Water anticipated to be made available for Delivery for the succeeding two Years.

6.2.2 In addition to the scheduling meetings required by Subsection 6.2.1 and 6.3.2, the Authorized Representatives of the Community and Chandler shall also consult with one another during any operational emergency as soon as reasonably practicable after learning of such emergency.

### 6.3 **Delivery Schedule.**

6.3.1 On or before September 1 of each Year, and after the meeting required by Subsection 6.2.1, the Authorized Representative of Chandler shall provide the Authorized Representative of the Community with a proposed schedule for Delivery setting forth Chandler's intended Delivery of Additional Chandler Reclaimed Water for the following Year, on a month-by-month basis. Unless otherwise agreed to in writing by the Authorized Representatives of Chandler and the Community, Deliveries are to be made on a continuous flow basis taking into account the existence of Diurnal Flow.

6.3.2 The Authorized Representatives of the Community and Chandler shall meet within fourteen (14) calendar days after the proposed schedule for Delivery has been provided and shall, at that meeting discuss and agree upon the final schedule. The final schedule for the immediately ensuing Year shall be in such form as is agreed upon by the Authorized Representatives of the Community and Chandler and shall identify:

6.3.2.1 The quantities of Additional Chandler Reclaimed Water scheduled to be made available for Delivery for that Year, pursuant to Subsection 6.1, and quantities of Chandler Reclaimed Water scheduled to be made available for Delivery for that Year, pursuant to Subparagraph 5.3 of the Settlement Exchange Agreement; and

6.3.2.2 Any other information required under the Subparagraph 5.5.2 of the Settlement Exchange Agreement.

6.3.3 At the same meeting required by Subsection 6.3.2, the Authorized Representatives of the Community and Chandler shall prepare:

6.3.3.1 A schedule for delivery of Additional Community CAP Exchange Water to Chandler, on both a Yearly and month-by-month basis, for the immediately ensuing Year to be submitted by the Community to Chandler, the Secretary, and the CAP Operating Agency in the notice required pursuant to Subsection 6.5; and

6.3.3.2 A preliminary schedule for delivery of Additional Community CAP Exchange Water to Chandler, on a Yearly basis, for the two years following the immediately ensuing year to be submitted by the Community to Chandler, the Secretary, and the CAP Operating Agency in the notice required pursuant to Subsection 6.5.

6.3.3.3 The schedule for the delivery of Community CAP Exchange Water to Chandler in the immediately ensuing Year shall reflect a Yearly delivery to Chandler of eight tenths (0.8) of an acre-foot of Additional Community CAP Exchange Water for each one (1.0) acre-foot of Additional Chandler Exchange Reclaimed Water scheduled to be Delivered to the Community for that Year pursuant to Subsection 6.3.2.1. The preliminary schedule for the delivery of Additional Community CAP Exchange Water to Chandler for the two years following the immediately ensuing year shall reflect a Yearly delivery to Chandler of eight tenths (0.8) of an acre-foot of Additional Community CAP Exchange Water for each one (1.0) acre-foot of Additional Chandler Exchange Reclaimed Water anticipated to be scheduled for Delivery to the Community in those Years.

6.3.3.4 The month-by-month schedule for the delivery of Additional Community CAP Exchange Water to Chandler is not required to maintain a ratio of eight tenths (0.8) of an acre-foot of Additional Community CAP Exchange Water for each one (1.0) acre-foot of Additional Chandler Exchange Reclaimed Water scheduled to be or actually Delivered in any month, provided that the ratio of eight tenths (0.8) of an acre-foot of Additional Community CAP Exchange Water to one (1.0) acre-foot of Additional Chandler Exchange Reclaimed Water scheduled for Delivery is maintained for the Year.

6.3.4 In addition to modifying schedules for the Delivery of Additional Chandler Reclaimed Water for the reasons described in Subsection 6.4.5 and 6.4.6, Authorized Representatives of the Community and Chandler may, for any reason and at any time, agree to amend or modify the final schedules for the Delivery of Additional Chandler Reclaimed Water during any Year.

**6.4 Acceptance of Additional Chandler Reclaimed Water and Notice Requirements.**

6.4.1 Except as provided at Subparagraph 4.3.2 in the Settlement Exchange Agreement and Subsection 6.4.9, all Additional Chandler Reclaimed Water made available for Delivery shall be from a Plant that is in Attainment. Subject to the provisions of this Subsection 6.4.1, Chandler shall make Additional Chandler Reclaimed Water available for Delivery in accordance with the schedule developed pursuant to Subsection 6.3. However, Chandler shall be excused from Delivering in accordance with the schedule developed pursuant to Subsection 6.3 under the conditions described in Subsection 6.4.1.1 through 6.4.1.4, but shall Deliver as much of the Additional Chandler Reclaimed Water scheduled for Delivery as reasonably possible in light of such conditions.

6.4.1.1 The Chandler Plant or Plants producing Reclaimed Water available for Delivery is, or are, in Non-Attainment or is, or are, in Exceedance.

6.4.1.2 During emergencies or Force Majeure Events, as defined in Subsection 6.12, which prevent Chandler from making such Deliveries.

6.4.1.3 During periods when a Chandler Plant or off-Reservation pipeline located within Chandler, necessary to enable Chandler to make a Delivery, is down for repair provided such repair was not due to Chandler's failure to maintain these facilities.

6.4.1.4 During periods when the Community does not accept Delivery pursuant to Subsection 6.4.2.

6.4.2 Subject to the provisions of this Subsection 6.4.2, the Community shall accept Delivery of Additional Chandler Reclaimed Water made available for Delivery in accordance with the schedule developed pursuant to Subsection 6.3. However, the Community shall be excused from accepting Delivery in accordance with the schedule developed pursuant to Subsection 6.3 under the conditions described in Subsections 6.4.2.1 through 6.4.2.6, but shall accept Delivery of as much of the Additional Chandler Reclaimed Water scheduled for Delivery as reasonably possible in light of such conditions.

6.4.2.1 During scheduled periods of canal dry-up or other OM&R activities scheduled in accordance with Subsection 6.9.

6.4.2.2 During emergencies or Force Majeure Events, as defined in Subsection 6.12, which prevent the Community from accepting such Deliveries. Emergencies relating to storm water runoff are limited to 50-year or greater flood events requiring the Community to evacuate water from its canal.

6.4.2.3 During periods when the Community's Water Delivery System, including the Chandler Pipeline, necessary to enable the Community to accept

Delivery, is down for repair for a reasonable time provided such repair was not due to the Community's failure to maintain these facilities.

6.4.2.4 During periods when the Chandler Reclaimed Water to be Delivered is produced by a Plant that is in Non-Attainment, except as provided at Subparagraphs 4.3.2 in the Settlement Exchange Agreement and Subsection 6.4.9.

6.4.2.5 When Chandler is not in compliance with the water quality provisions set forth in applicable permits or laws regarding the treatment of waste water.

6.4.2.6 When sufficient quantities of water are not available for blending pursuant to the requirements of Subsection 5.8.

6.4.3 Where the Community is unable to or does not accept Delivery, or where Chandler is unable to or does not Deliver, the following shall apply:

6.4.3.1 If the Community does not accept Delivery of Additional Chandler Reclaimed Water for reasons other than as described in Subsection 6.4.2, Chandler shall, except for Additional Chandler Reclaimed Water rescheduled for Delivery in accordance with Subsection 6.4.7, receive credit for having Delivered such quantities of Chandler Reclaimed Water as were scheduled for delivery during that period of time;

6.4.3.2 If the Community fails to accept Delivery of Additional Chandler Reclaimed Water in the quantities scheduled pursuant to Subsection 6.3 due to the reasons set forth in Subsection 6.4.2, the resulting shortage in Delivery shall be resolved by amending the schedule(s) for Delivery in accordance with Subsection 6.4.6; and

6.4.3.3 If Chandler fails to Deliver Additional Reclaimed Water in the quantities scheduled pursuant to Subsection 6.3 due to the reasons set forth in Subsection 6.4.1, the resulting shortage in Deliveries shall be resolved by amending the schedule(s) for Delivery in accordance with Subsection 6.4.5.

6.4.4 The amount of Additional Chandler Reclaimed Water actually Delivered on a given day of any quarter shall vary by no more than ten percent (10%) from the average daily quantity to be Delivered as set forth in the schedule developed in accordance with Subsection 6.3 or amended schedule developed in accordance with Subsections 6.4.5, 6.4.6, or 6.4.7.

6.4.5 In the event that Chandler needs to alter a scheduled Delivery due to the circumstances set forth in Subsections 6.4.1.1 through 6.4.1.4, notice of such need shall be provided as soon as practicable by telephone, if during normal business hours, or by email if not during normal business hours, or by other effective methods to provide actual notice, and shall be followed-up on the next business day in writing. The written notice shall contain an explanation of the need to reduce or discontinue acceptance of Deliveries by the duration and amount specified. Chandler shall then provide the Authorized

Representative of the Community with a revised schedule of Delivery pursuant to Subsection 6.3.4. The Community and Chandler shall meet in a timely manner to review the proposed schedule and to agree upon any adjustments to be made thereto.

6.4.6 In the event that the Community needs Chandler to alter a scheduled Delivery due to circumstances identified in Subsections 6.4.2.1 through 6.4.2.6, notice of such need shall be provided as soon as practicable by telephone, if during normal business hours, or by email if not during normal business hours, or by other effective methods to provide actual notice, and shall be followed-up on the next business day in writing. The written notice shall contain an explanation of the need to reduce or discontinue acceptance of Deliveries by the duration and amount specified. Chandler shall then provide the Authorized Representative of the Community with a revised schedule of Delivery pursuant to Subsection 6.3.4. The Community and Chandler shall meet in a timely manner to review the proposed schedule and to agree upon any adjustments to be made thereto.

6.4.7 If, for any reason, Chandler is unable to Deliver or the Community is unable to accept Delivery of Chandler Reclaimed Water in accordance with the schedule developed pursuant to Subsection 6.3, then the Authorized Representative of Chandler or the Community may, upon two weeks' notice, require a meeting between their Authorized Representatives, at which time they shall use their best efforts to amend the schedules pursuant to Subsection 6.3.4 such that the total quantities of Additional Chandler Reclaimed Water scheduled in the then current Year can be Delivered and accepted.

6.4.8 If, notwithstanding Subsections 6.4.5 through 6.4.7, either Chandler fails to Deliver, or the Community fails to accept Delivery in the annual quantities scheduled pursuant to Subsection 6.3 due to any of the reasons set forth in Subsections 6.4.1.1 through 6.4.1.4 or 6.4.2.1 through 6.4.2.6 respectively, the resulting shortages in Deliveries actually made shall be resolved by reconciling the Delivery shortfalls in the ensuing Year's schedule by adding to the Additional Chandler Exchange Reclaimed Water scheduled to be delivered pursuant to Subsection 6.3.3.3 an amount of Additional Community CAP Exchange Water equal to the difference between the Additional Community CAP Exchange Water that should have been delivered in the prior Year and the Additional Community CAP Exchange Water that was actually delivered in the prior Year.

6.4.9 If, notwithstanding a Chandler Plant's Non-Attainment status, the Community requests Delivery or otherwise agrees to permit the continued Delivery of Additional Chandler Reclaimed Water from that Chandler Plant, and if that Delivery will not cause Chandler to violate the terms of any permit, law or regulation, or otherwise negates the indemnification or waiver set forth at Subsections 9.1.4 and 9.1.5, Chandler shall Deliver the Additional Chandler Reclaimed Water and shall be credited with having Delivered Additional Chandler Reclaimed Water in the same manner it would have if the Chandler Plant producing Reclaimed Water for that Delivery had been in Attainment.

**6.5 Scheduling Chandler's Diversion of Additional Community CAP Exchange Water.**

6.5.1 Prior to October 1 of each Year the Community shall submit, in writing, to the CAP Operating Agency, the Secretary, and Chandler's Authorized Representative, a notice, identifying:

6.5.1.1 The total and monthly amounts of Additional Community CAP Exchange Water to be delivered to Chandler during the immediately ensuing Year, which amounts shall be the same as those identified in the schedule developed in accordance with Subsection 6.3.3.1; and

6.5.1.2 The amounts of Additional Community CAP Exchange Water projected to be ordered by the Community for Delivery to Chandler during the two Years following the immediately ensuing Year, which amounts shall be the same as those in the preliminary schedule for delivery of Additional Community CAP Exchange Water to Chandler developed in accordance with Subsection 6.3.3.2.

6.5.2 The Additional Community CAP Exchange Water to be delivered to Chandler pursuant to the provisions of this Agreement shall be delivered and measured at a CAP Turnout or such other points as may be agreed upon by Chandler and the CAP Operating Agency pursuant to subparagraph 4.5(a) of Chandler's CAP M&I Subcontract. The Community shall take such actions as are within its power for the CAP Operating Agency to cause the Additional Community CAP Exchange Water to be so delivered to Chandler.

6.5.3 Subject only to the total amount of Additional Community CAP Exchange Water scheduled to be delivered to Chandler in a Year pursuant to Subsection 6.5.1.1, Chandler shall order the actual delivery of the Additional Community CAP Exchange Water to which it is entitled under this Agreement in accordance with Chandler's CAP Delivery Subcontract. Nothing herein shall preclude Chandler from ordering the delivery of Additional Community CAP Exchange Water during any Year in amounts that deviate from the monthly quantities specified in the schedule for delivery of Additional Community CAP Exchange Water to be delivered to Chandler, provided that the total quantity does not exceed the quantity scheduled for delivery to Chandler in accordance with Subparagraph 6.5.1.1.

6.5.4 Except to the extent that this Section 6.0 conflicts with the terms of Chandler's CAP Delivery Subcontract, deliveries, and use, of Additional Community CAP Exchange Water delivered to Chandler by the CAP Operating Agency shall be subject to the Conditions relating to Delivery and Use in Article 4.3 of Chandler's CAP Delivery Subcontract. Except as otherwise provided in this Section 6.0, the following subarticles and articles of Chandler's CAP Delivery Subcontract shall apply to Chandler and Chandler's use of Additional Community CAP Exchange Water under this Exchange Agreement: Subarticles 4.5(c), and 4.5(d), Articles 4.9, 4.10, 5.3, 5.4, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13.

6.5.5 Transportation and other loss charges associated with the delivery of Additional Community CAP Exchange Water to Chandler, if any, shall be assessed against Chandler, and not against the Community, from the CAP Turnout described at Subsection 6.5.2 to the point designated by Chandler to receive such Additional Community CAP Exchange Water.

6.5.6 Chandler's failure to order the total amount of Additional Community CAP Exchange Water shall not affect Chandler's obligation to make Additional Chandler Reclaimed Water available for Delivery to the Community or the Community's obligation to accept such Delivery in accordance with the schedule developed pursuant to Subsection 6.3.

6.6 **Water Exchange Weekly, Monthly, and Annual Reports.** For the Additional Chandler Exchange Reclaimed Water and Additional Community CAP Exchange Water delivered under this Agreement, the Parties shall fulfill the same reporting requirements set forth in subparagraph 5.8 of the Settlement Exchange Agreement, which are incorporated here by this reference as if fully set forth and is acknowledged and agreed to by the Parties.

6.7 **Delivery of Additional CAP Exchange Water During Times of Shortage.**

6.7.1 If the CAP Operating Agency reduces deliveries of CAP Indian Priority Water to the Community as a result of a time of shortage of CAP Water as defined at Subparagraph 8.16.1 of the Settlement Agreement, the Authorized Representative of the Community shall, within thirty (30) calendar days after receipt of written notice of the same from the Secretary or the CAP Operating Agency, provide written notice to the Authorized Representative of Chandler whether or not the Community intends to reduce the amount of Additional Community CAP Exchange Water available to Chandler pursuant to this Section 6.0 and, if so, the percentage amount of such reduction. The quantity of Additional Community CAP Exchange Water made available to Chandler shall be reduced by not more than the same percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with Subparagraph 8.16.2 of the Settlement Agreement. Unless the Authorized Representative of Chandler agrees otherwise in writing, the Community shall not voluntarily reduce its allotment of Community CAP Water during a time of shortage if such voluntary reduction will reduce the amount of Additional CAP Exchange Water that would otherwise be available to Chandler for that Year.

6.7.2 If the Community reduces the amount of Community CAP Exchange Water available to Chandler in accordance with this Subsection 6.7, Chandler shall, unless otherwise agreed upon by the Community in writing, reduce the amount of Additional Chandler Exchange Reclaimed Water to be made available for Delivery to the extent necessary to maintain the ratio of eight tenths (0.8) of an acre-foot of Additional Community CAP Exchange Water to be exchanged for each one (1) acre-foot of Chandler Reclaimed Water.

## 6.8 **Blending Water.**

6.8.1 It is the Community's responsibility to provide sufficient water, from any source of water described in Subparagraph 4.1 of the Settlement Agreement, other than Reclaimed Water, to blend with Additional Chandler Exchange Reclaimed Water such that the Chandler Reclaimed Water comprises no more than fifty percent (50%) of the total water in the Community's water delivery system at the confluence of the Chandler Pipeline and the Community's water delivery system or at such other location as may be agreed upon by the Authorized Representatives of the Community and Chandler pursuant to Subsection 6.13.

6.8.2 If the Community fails to order or provide sufficient blending water from any source of Water described in Subparagraph 4.1 of the Settlement Agreement, other than Reclaimed Water, necessary to achieve the fifty percent (50%) blend set forth in Subsection 6.8.1, and such water is available for such blending purposes, Chandler shall not be required to curtail or stop Delivering Additional Chandler Exchange Reclaimed Water and Chandler shall continue to be credited for having made Additional Chandler Exchange Reclaimed Water available for Delivery. This Subsection 6.8.2 shall not affect Chandler's and the Community's respective obligation to use best efforts to reschedule Deliveries in accordance with Subsection 6.4.7.

6.8.3 Unless otherwise agreed to in writing by the Authorized Representatives of the Community and Chandler, if sufficient water from any source of water described in the described in Subparagraph 4.1 of the Settlement Agreement other than Reclaimed Water is not available for blending with Chandler Reclaimed Water and such lack of availability was due solely to factors outside of the control of the Community or due to a change in Chandler's annual Delivery schedule, Chandler shall cease further Deliveries within thirty (30) calendar days of its receipt of notice of a lack of availability of water for blending. If Chandler is required to cease further Delivery pursuant to this Subsection 6.8.3, and the Community later notifies Chandler that adequate quantities of water are available for blending purposes, Chandler may, but shall not be required to, Deliver additional quantities of Additional Chandler Exchange Reclaimed Water such that the amount of Additional Chandler Exchange Reclaimed Water it would have Delivered, but for a shortage of water available for blending, is ultimately delivered to the Community during that Year. The Community shall not be required to accept increased Deliveries to make up for a reduction in the quantity of Reclaimed Water Delivered due to a lack of water for blending, but shall use all reasonable efforts to do so subject to water delivery system capacity and receipt of at least twenty-four (24) hours prior notice.

## 6.9 **Community Dry-ups and other Community and Chandler OM&R Activities.**

In the event that notice of specific dates of dry-up cannot be provided at the meetings required by Subsections 6.2.1 and 6.3.1, the Community shall provide estimated dates for scheduled dry-ups for the ensuing Year and shall give notice of the specific dates of such scheduled dry-ups at least forty-five (45) calendar days prior to initiating the same. Such scheduled dry-ups shall not last more than thirty (30) calendar days. The Community and Chandler shall use their best efforts to coordinate any scheduled dry-ups or other OM&R activities of their respective systems or any portion thereof to meet the Delivery and acceptance requirements of this Agreement, and if

necessary seek to reschedule Deliveries in accordance with Subsections 6.4.5, 6.4.6, and 6.4.7.

6.10 **Transportation Losses of Additional Chandler Reclaimed Water.** Chandler shall be responsible for transportation losses of Additional Chandler Reclaimed Water occurring before such water reaches the Chandler Point of Delivery. The Community shall be responsible for transportation losses of Additional Chandler Reclaimed Water occurring after such water passes the Chandler Point of Delivery.

6.11 **Measuring Devices.** The Parties shall install and maintain measuring devices in accordance with Subparagraph 5.15 of the Settlement Exchange Agreement.

6.12 **Emergencies and Force Majeure Event.** When Chandler or the Community is unable to Deliver, or to accept Delivery of, Additional Chandler Reclaimed Water due to Emergency or Force Majeure Event, the Community's and Chandler's obligations under this Exchange Agreement shall be suspended during the period of such Emergency or Force Majeure Event. After the period has ended, Chandler and the Community shall use their best efforts to amend the schedule developed pursuant to Subsection 6.3 such that the total quantities of Additional Chandler Reclaimed Water scheduled in the then current Year can be Delivered and accepted.

6.13 **Chandler Point of Delivery.** Unless mutually agreed to in writing by the Authorized Representatives of the Community and Chandler, Additional Chandler Reclaimed Water shall be Delivered at the Chandler Point of Delivery.

6.14 **Payment for Delivery and Transportation of Additional Community CAP Exchange Water.**

6.14.1 Chandler shall pay only the charges for the delivery of Additional Community CAP Water as provided herein and shall not pay any other charges or payments for Additional Community CAP Water.

6.14.2 Chandler shall be responsible for providing interconnection capacity to permit Delivery of Additional Community CAP Exchange Water to Chandler and shall pay any transportation charges, including those imposed pursuant to the "Water Transportation Agreement Between the Salt River Valley Water User's Association and the City of Chandler" dated September 10, 1991, as amended, for the Delivery of Additional Community CAP Exchange Water to Chandler from the point at which the Additional Community CAP Exchange Water is diverted from the CAP System.

6.14.3 Chandler shall pay the CAP Operating Agency the CAP Fixed OM&R Charges associated with Delivery of Additional Community CAP Exchange Water to Chandler in advance of Delivery.

6.14.4 Chandler shall pay the CAP Operating Agency the CAP Pumping Energy Charges associated with the delivery of Additional Community CAP Exchange Water to Chandler in advance of such delivery.

6.14.5 In accordance with Subparagraph 8.20 of the Settlement Agreement, no CAP water service capital charges shall be due or payable for Additional Community CAP Water delivered pursuant to this Agreement, and Chandler shall not be obligated to pay any CAP water service capital charges, or any other capital charges associated with the Additional Community CAP Exchange Water delivered to Chandler pursuant to this Agreement.

6.14.6 In no event shall the Community be liable for any payment of any kind, in any capacity, to or on behalf of Chandler in regard to any Additional Community CAP Exchange Water delivered to, on behalf of, or by Chandler.

6.15 **Duty to Repair Water Delivery System.**

6.15.1 If a Chandler Plant, off-Reservation pipeline or other off-Reservation facility located within Chandler is damaged, fails, or is blocked in such a manner that it impairs or prevents Chandler from meeting its responsibilities under this Agreement, Chandler shall take prompt action to repair such damage, failure or blockage including, as needed, the installation of temporary structures. Permanent repairs designed to prevent future failures or blockages shall be made as soon as practicable to replace any temporary repairs. Except for damages caused by the Community, all such repairs and/or replacement costs shall be borne by Chandler.

6.15.2 If any on-Reservation pipeline, including the Chandler Pipeline or other on-Reservation facility is damaged, fails, or is blocked in such a manner that it impairs or prevents the Community from meeting its responsibilities under this Agreement, the Community shall take prompt action to repair such damage, failure or blockage including, as needed, the installation of temporary structures in order to allow the Deliveries contemplated by this Agreement to resume. Permanent repairs designed to prevent future failures or blockages shall be made as soon as practicable to replace any temporary repairs. Except for damages caused by Chandler, all such repair and/or replacement costs shall be borne by the Community.

**7.0 EVENTS OF DEFAULT**

7.1 **Failure to Fulfill Obligations Under the Agreement or Collateral Agreements.** Any failure by the Parties to fulfill their obligations under this Agreement or the Collateral Agreements, shall constitute a default under this Agreement and the Collateral Agreements.

7.2. **Notice of Default.** In the event of a default by a Party as defined in Subsection 7.1, the Party alleging default shall provide written notice ("Notice of Default") to the other Party specifying the default and demanding that the default be cured within ninety (90) days of the notice. Parties shall simultaneously provide a copy of the Notice of Default to the United States. Notice shall be given in the manner and to the officers specified in Subsection 9.4. The Notice of Default shall specifically describe the default and how the Party can cure the default. The purpose of this Subparagraph is to put a Party 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.

7.3. **Remedies.** The Parties agree that if a Party fails to perform its obligations under this Agreement, other remedies will not be sufficient, and the Parties agree that, in addition to other available remedies, the remedy of specific performance shall be available to the aggrieved Party.

7.4 **Remedies Cumulative.** All rights or remedies of the Parties under this Agreement shall be cumulative and not exclusive. All remedies available under this Agreement shall be in addition to any and all remedies at law or in equity.

## **8.0 TERMINATION**

8.1 **Term.** This Agreement shall automatically terminate on Termination Date.

8.2 **Failure to Receive Necessary Approvals.** In the event the Parties fail to receive any federal or state approvals that are necessary to effectuate this Agreement or any of the Collateral Agreements by December 31, 2018, this Agreement shall terminate without notice by or to any Party and shall be null and void.

## **9.0 GENERAL PROVISIONS**

9.1 **Indemnity and Waiver.**

9.1.1 Chandler shall indemnify, defend and hold harmless the Community, and any and all of its Council, agents and employees from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses, and liabilities for injury or death of any person or persons, or for damage or damages to property occasioned by or arising from any act, omission, professional error, fault, mistake or negligence of Chandler, and its employees, agents or representatives in conjunction with or incident to its performance under this Agreement or occasioned by or arising from Chandler's breach of its duties set forth under this Agreement.

9.1.2 The Community shall indemnify, defend and hold harmless Chandler and any and all of its Council members, agents and employees from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses and liabilities for injury or death of any person or persons, or for damage or damages to property occasioned by or arising from any act, omission, professional error, fault, mistake or negligence of Community, and its employees, agents or representatives in conjunction with or incident to its performance under this Agreement or occasioned by or arising from Community's breach of its duties set forth under this Agreement.

9.1.3 Chandler shall indemnify, defend and hold harmless the Community, and any and all of its Council, agents and employees from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses,

damages, expenses, and liabilities for injury or death of any person or persons, or for damage or damages to property occasioned by or arising from: (1) the Delivery of any Additional Chandler Reclaimed Water which is produced by a Plant in Non-Attainment and which has not been accepted by the Community and (2) the delivery of all Additional Community CAP Exchange Water to Chandler pursuant to this Agreement.

9.1.4 The Community shall indemnify, defend, and hold harmless Chandler and any and all of its Council members, agents and employees from and against any and all claims, demands, expenses and liabilities for injury or death of any person or persons, or for damage or damages, to property occasioned by or arising from the Delivery of any Additional Chandler Reclaimed Water produced by a Plant in Attainment and not in Exceedance and which is Delivered in accordance with this Agreement, or produced by a Plant in Non-Attainment and Delivered in accordance with this Agreement, except that such indemnification shall not apply to any actions that may be taken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. section 9601, *et seq.*

9.1.5 The Community hereby waives and releases any and all claims and damages asserted against Chandler, and any and all of its council members, agents and employees under Federal, State, Tribal or other law arising out of the Delivery of Additional Chandler Reclaimed Water from a Plant in Attainment and not in Exceedance or that otherwise meets the provisions of Paragraph 4.0 of the Settlement Exchange Agreement.

9.1.6 Chandler hereby waives and releases any and all claims and damages asserted against the Community, and any and all of its council members, agents and employees under Federal, State, Tribal or other law as a result of the delivery of Additional Community CAP Water to Chandler in accordance with this Agreement.

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

9.3 **Counterparts and PDFs.** This Agreement may be signed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. All signatures need not be on the same counterpart. A PDF of an executed counterpart of this Agreement shall constitute an original document for all purposes hereunder.

9.4 **Notice.** Any notice to be given under this Agreement shall be properly given or made when received by all of the officers designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows to all of the officers designated below (or addressed to such other person and/or address as the entity to receive such notice shall have designated by written notice given as required by this Section 9.4):

(a) As to the United States:

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

Regional Director  
Western Region Office  
Bureau of Indian Affairs  
2600 N. Central Avenue, 4th floor  
Phoenix, Arizona 85004

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

(b) As to the Community:

Governor  
Gila River Indian Community  
P.O. Box 97  
Sacaton, Arizona 85247

With copies to:

Linus Everling  
General Counsel  
Gila River Indian Community  
P.O. Box 97  
Sacaton, Arizona 85247

Donald R. Pongrace  
Akin Gump Strauss Hauer & Feld LLP  
1333 New Hampshire Avenue, NW  
Washington, D.C. 20036

(c) As to Chandler:

City of Chandler  
Director of Municipal Utilities Department  
Post Office Box 4008, Mailstop 404  
Chandler, Arizona 85244-4008

With a copy to:

Chandler City Attorney  
Chandler City Attorney Office  
Post Office Box 4008, Mailstop 602  
Chandler, Arizona 85244-4008

9.5 **Governing Law.** This Agreement shall be governed by Federal law and, if and to the extent applicable, the laws of the State of Arizona. Disputes arising between the Parties with the respect to this Agreement shall be resolved in accordance with **Exhibit B** (Dispute Resolution) attached hereto, which is incorporated here by this reference as if fully set forth and is acknowledged and agreed to by the Parties.

9.6 **No Waiver.** No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving Party. A waiver by any Party of any right or remedy hereunder shall not be construed as a waiver of any other right or remedy, whether pursuant to the same or a different term, condition, or covenant.

9.7 **Severability.** If any provision or clause of this 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 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 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 Agreement.

9.8 **Construction and Effect.** This 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 Agreement are for convenience only and shall not be considered in the construction of this Agreement. When used herein, the terms “include” or “including” shall mean without limitation by reason of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term "person" shall include an individual, corporation, partnership, trust, estate, or any other duly formed entity as well as a natural person. If the last day of any time period stated herein should fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona. If a cross-reference within any provision cites a particular section or paragraph number of this Agreement, it shall be a reference to the referred section or paragraph and its subparts.

9.9 **Third Party Beneficiaries.** There shall be no third party beneficiaries of this Agreement or any provision hereof.

9.10 **Time of the Essence.** Time is of the essence in the performance of this Agreement.

9.11 **Good Faith Negotiations.** This Agreement has been negotiated in good faith and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this 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 Agreement.

9.12 **Attorneys' Fees.** In the event of litigation between the Parties to enforce this 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.

9.13 **Subsequent Documents.** Each of the Parties hereto shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

9.14 **Amendments and Modifications; Entire Agreement.** This Agreement may not be amended except by written instrument signed by both Parties and approved by the United States. This Agreement and the Collateral Agreements constitute the entire agreement of the Parties with respect to the subject matter thereof and supersede all prior written and oral agreements, understandings, and negotiations between the Parties with respect to the subject matter thereof, including, without limitation, the Collateral Agreements.

9.15 **Authorizations.** Each Party to this Agreement represents that the person executing the Agreement on behalf of such Party is appropriately authorized to enter into this Agreement on behalf of the Party for which they sign and that no further action or approvals are necessary before execution of this Agreement.

(Signatures follow)

**IN WITNESS WHEREOF**, these presents are hereby signed and agreed to by the Parties hereto.

**LESSEE**

**CITY OF CHANDLER**, an Arizona municipality

**COMMUNITY**

**GILA RIVER INDIAN COMMUNITY**, a federally recognized Indian tribe

By: \_\_\_\_\_  
Jay Tibshraeny  
Mayor of City of Chandler

By: \_\_\_\_\_  
Stephen R. Lewis  
Governor

DATE: \_\_\_\_\_, 2016

DATE: \_\_\_\_\_, 2016

Attest:

Attest:

\_\_\_\_\_  
Marla Paddock  
City Clerk

\_\_\_\_\_  
Council Secretary

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Kay Bigelow  
City Attorney

\_\_\_\_\_  
Linus Everling  
General Counsel

(United States of America signatures follow)

Pursuant to Sections 204(b)(2) and 205(a)(2) of Public Law 108-451, the foregoing Exchange Agreement for CAP Water between City of Chandler and the Gila River Indian Community is hereby approved.

**THE UNITED STATES OF AMERICA**

**BUREAU OF RECLAMATION**

By \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**THE UNITED STATES OF AMERICA**

**BUREAU OF INDIAN AFFAIRS**

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 18.1**

**Reclaimed Water Exchange Agreement Among  
the Cities of Mesa and Chandler,  
the Community and the United States**

This agreement is entered into as of the 21 day of December, <sup>2005-03</sup> ~~2003~~ among

the United States, the Gila River Indian Community, the City of Mesa and the City of Chandler.

**1.0 Preamble**

This agreement provides for Chandler's contribution of Chandler Contributed Reclaimed Water to the Community and for the exchange, as between Chandler and the Community and as between Mesa and the Community, of Exchange Reclaimed Water for Community CAP Exchange Water and for the Delivery of such Reclaimed Water ("Exchange Agreement"). Both the contribution of Chandler Contributed Reclaimed Water and the net gain of water derived from the exchanges with the Cities (Reclaimed Water Exchange Premium) constitute components of the Community's settlement water budget as described in Paragraph 4.0 of the Settlement Agreement.

Mesa and Chandler (the "Cities") are in need of an additional source of water and need to comprehensively manage their water resources in accordance with their master plans. The Community has available CAP water that can be exchanged with the Cities for other water. The Community and the Cities recognize the need to enter into an exchange that will assist the Cities to acquire additional CAP water and provide the Community with additional water. Although not a part of the consideration for this Exchange Agreement, the Community agrees that it supports the Cities' ability to use the

Final Execution Version  
October 21, 2005

Community CAP Exchange Water that they receive through this agreement for Assured Water Supply purposes.

## **2.0 Recitals**

2.1 The purposes of this Exchange Agreement are to:

2.1.1 Provide for the exchange of twenty-three thousand five hundred thirty (23,530) acre-feet per Year (AFY) of Community CAP Exchange Water for twenty-nine thousand four hundred (29,400) AFY of Mesa Reclaimed Water;

2.1.2 Provide for the exchange of eight thousand nine hundred seventy (8,970) AFY of Community CAP Exchange Water for eleven thousand two hundred (11,200) AFY of Chandler Exchange Reclaimed Water;

2.1.3 Provide for Chandler's contribution to the Community of four thousand five hundred (4,500) AFY of Chandler Contributed Reclaimed Water;

2.1.4 Provide for the Delivery of Exchange Reclaimed Water; and

2.1.5 Provide Mesa and Chandler with Community CAP Exchange Water.

## **3.0 Definitions**

3.1 Capitalized terms used in this Exchange Agreement that are not expressly defined herein shall have the same meaning as in the Settlement Agreement. The following terms shall have the following meanings when capitalized and used in this Exchange Agreement:

3.1.1 "A+ Reclaimed Water Quality Standards" shall mean those reclaimed water quality standards set forth in Table 1 of Subparagraph 4.1.1.

3.1.2 “Assured Water Supply” shall have the meaning ascribed to it in A.R.S. §45-576, *et seq.* and the rules promulgated by the Arizona Department of Water Resources thereunder, as such statutes and rules may be amended.

3.1.3 “Attainment” or “in Attainment” shall mean that the Plant producing Reclaimed Water to be Delivered either satisfies the A+ Water Quality Standards for each Parameter as demonstrated through monitoring conducted pursuant to Subparagraph 4.2 or satisfies all A+ Reclaimed Water Quality Standards except for one or more of the Parameters addressed by the contingency measures set forth in Subparagraphs 4.3.3, 4.3.4 or 4.3.5 and the requirements of such contingency measures are fully satisfied.

3.1.4 “Authorized Representative” shall mean the representatives of the Community, Chandler, and Mesa appointed pursuant to Subparagraph 7.6 to administer certain provisions of this Exchange Agreement.

3.1.5 “CAP Turnout” shall mean those locations where water is diverted from the CAP Aqueduct for delivery to Chandler under the terms of Chandler’s CAP Delivery Subcontract or to Mesa under the terms of Mesa’s CAP Delivery Subcontract.

3.1.6 “Chandler” shall mean the City of Chandler, an Arizona municipal corporation.

3.1.7 “Chandler’s CAP Delivery Subcontract” shall mean that contract between the United States, Central Arizona Water Conservation District, and the City of Chandler Providing for Water Service, Central Arizona Project, dated December 26, 1984, as amended.

3.1.8 “Chandler Contributed Reclaimed Water” shall mean the four thousand five hundred (4,500) AFY of Reclaimed Water made available for Delivery to the

Community by Chandler pursuant to this Exchange Agreement as a contribution to the Settlement Agreement.

3.1.9 “Chandler Delivery Agreement” shall mean that agreement entitled “Agreement for Delivery of Reclaimed Water” entered into between the Community and Chandler on March 7, 2001, as may be amended from time to time, providing for Chandler’s sale or exchange of reclaimed water to the Community and for other purposes.

3.1.10 “Chandler Exchange Reclaimed Water” shall mean the Reclaimed Water that Chandler makes available for Delivery to the Community in exchange for Community CAP Exchange Water pursuant to this Exchange Agreement.

3.1.11 “Chandler Pipeline” shall mean the pipeline to be located on the Reservation along old Price Road that will be used to Deliver Chandler Reclaimed Water to a structure near the northern boundary of the Reservation as described in the Construction Agreement.

3.1.12 “Chandler Point of Delivery” shall mean that location where Chandler Reclaimed Water first crosses the Reservation boundary through or by way of facilities constructed in accordance with the Construction Agreement or Subparagraph 5.18.

3.1.13 “Chandler Reclaimed Water” shall mean Chandler Exchange Reclaimed Water and Chandler Contributed Reclaimed Water.

3.1.14 “Community CAP Exchange Water” shall mean the Community’s CAP Indian Priority Water that the Community provides to Chandler or Mesa in exchange for Chandler Exchange Reclaimed Water or Mesa Reclaimed Water pursuant to this Exchange Agreement.

3.1.15 “Construction Agreement” shall mean that agreement entitled “Intergovernmental Agreement for Construction of Chandler Pipeline” entered into between the Community and Chandler on February 7, 2001 providing for the construction of the Chandler Pipeline.

3.1.16 “Deliver”, “Delivered”, “Deliveries”, “Delivering” or “Delivery” shall mean (1) the transporting of Chandler Reclaimed Water to the Chandler Point of Delivery, or (2) the transporting of Mesa Reclaimed Water to the Mesa Point of Delivery through the Mesa Pipeline or transportation of Mesa Reclaimed Water through an alternative conveyance structure pursuant to Subparagraph 6.11.1.2, or (3) the transportation or conveyance of Chandler or Mesa Reclaimed Water as may be agreed upon in writing by the affected Parties.

3.1.17 “Diurnal Flow” shall mean the daily or seasonal fluctuation in the quantity of Reclaimed Water produced by a Plant that is caused by the daily or seasonal variance in the quantity of wastewater flowing into such Plant.

3.1.18 “EPA” shall mean the United States Environmental Protection Agency.

3.1.19 “Exceed”, “Exceedance”, or “Exceeded”, shall mean that (1) monitoring conducted pursuant to Subparagraph 4.1 demonstrates that the Reclaimed Water produced by a Plant fails to satisfy the applicable A+ Reclaimed Water Quality Standards for one or more Parameters, or (2) monitoring required pursuant to Subparagraph 4.1 has not been conducted, or (3) such status is otherwise established pursuant to Subparagraph 4.1.7 relating to the failure to take a routine sample.

3.1.20 “Exchange Reclaimed Water” shall mean Chandler Exchange Reclaimed Water and Mesa Reclaimed Water.

3.1.21 "Force Majeure" or "Force Majeure Event" shall mean a cause beyond the control of the Parties, such as failure or threat of failure of facilities, flood, earthquake, storm, fire, lightening and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities and restraint by court order or public authority, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome.

3.1.22 "Mesa" shall mean the City of Mesa, an Arizona municipal corporation.

3.1.23 "Mesa's CAP Delivery Subcontract" shall mean that contract between the United States, Central Arizona Water Conservation District, and the City of Mesa Providing for Water Service, Central Arizona Project, Subcontract No. 5-07-30-W0060, as amended.

3.1.24 "Mesa Delivery Agreement" shall mean that agreement entitled "Intergovernmental Agreement for Delivery of Reclaimed Water dated April 18, 2002" entered into between the Community and Mesa as may be amended from time to time, providing for Mesa's exchange of reclaimed water to the Community and for other purpose.

3.1.25 "Mesa Pipeline" shall mean a pipeline capable of Delivering not less than 29,400 AFY of Mesa Reclaimed Water.

3.1.26 “Mesa Point of Delivery” shall mean that location where Mesa Reclaimed Water first crosses the Reservation boundary through the Mesa Pipeline or such alternative conveyance structure agreed upon by Mesa and the Community.

3.1.27 “Mesa Reclaimed Water” shall mean Reclaimed Water made available for Delivery by Mesa pursuant to this Exchange Agreement in exchange for Community CAP Exchange Water.

3.1.28 “Nitrogen Species” shall mean Total Nitrogen, Nitrate plus Nitrite as Nitrogen and Total Kjeldahl Nitrogen.

3.1.29 “Non-Attainment” shall mean that: (1) a Plant producing Reclaimed Water to be Delivered fails to satisfy one or more of the A+ Reclaimed Water Quality Standards for any Parameter as established by verification sampling and, if applicable, fails to satisfy the contingency measures set forth in Subparagraphs 4.3.3, 4.3.4 or 4.3.5, or (2) the monitoring required pursuant to Subparagraph 4.2 has not been conducted, or (3) such status is otherwise established pursuant to Subparagraph 4.1.7 relating to the failure to take a routine sample.

3.1.30 “OM&R” shall mean all activities required for the efficient Delivery and acceptance of water pursuant to this Exchange Agreement, including, but not limited to, dry-ups, the care, operation, maintenance, repair and replacement of canals, laterals, drains, pumps, pipes and appurtenances.

3.1.31 “Parameter” shall mean each constituent for which an A+ Reclaimed Water Quality Standard has been set forth in Table 1 of Subparagraph 4.1.1.

3.1.32 “Party” shall mean a person or entity represented by a signatory to this Exchange Agreement and “Parties” shall mean more than one such person or entity. The

United States participation as a Party shall be in the capacity as described in Subparagraph 3.1.38.

3.1.33 “Plant” or “Plants” shall mean a wastewater treatment facility or reverse osmosis facility that produces Mesa Reclaimed Water, Chandler Exchange Reclaimed Water, or Chandler Contributed Reclaimed Water and the infrastructure to convey such Reclaimed Water for Delivery.

3.1.34 “QA/QC” shall mean quality assurance/quality control.

3.1.35 “Reclaimed Water” shall mean Effluent that has been treated and produced by a Plant.

3.1.36 “Settlement Agreement” shall mean that agreement entered into among and between the Parties, and other parties to that agreement settling specified water rights claims raised by the parties in the Gila River Adjudication Proceedings. This Exchange Agreement constitutes Exhibit 18.1 to the Settlement Agreement.

3.1.37 “TRC” shall mean technical review criteria as defined in Subparagraph 4.5.5.2.

3.1.38 “United States” shall mean the United States of America acting (1) on its own behalf and capacity to the extent authorized by the Arizona Water Settlements Act, Public Law 108-451 (“Settlements Act”); (2) acting as trustee for the Community, Members and Allottees; (3) in all other capacities necessary to effectuate the terms of this Exchange Agreement to the extent authorized by the Settlements Act or any other applicable federal law; and (4) in no other capacity.

3.1.39 “Water Producer” shall mean Chandler or Mesa, or both, as the context requires, in their individual capacities as producers of Reclaimed Water from a Plant.

3.1.40 “Year” shall mean calendar year except where specifically otherwise provided.

#### **4.0 Reclaimed Water Quality**

##### **4.1 Routine Monitoring and A+ Reclaimed Water Quality Standards.**

4.1.1 Exchange Reclaimed Water and Chandler Contributed Reclaimed Water shall be treated at a Plant through a process, to be independently selected by each Water Producer, which process shall include secondary treatment, denitrification, filtration and disinfection. The Exchange Reclaimed Water and Chandler Contributed Reclaimed Water shall be monitored and shall meet the A+ Reclaimed Water Quality Standards as set forth in Table 1 below.

**TABLE 1**

<b>Parameters</b>	<b>Reclaimed Water Quality Standard</b>	<b>Units</b>	<b>Routine Sampling Frequency/Type</b>	<b>Notes</b>
Turbidity (field)	< = 2: 24-hour avg. and < = 5: single sample max	NTU	Continuous/ Grab (See Notes)	Less than or equal to 2 Nephelometric Turbidity Units (“NTU”) on a 24-hour average and less than or equal to 5 NTU for a single sample maximum. When continuously monitored, compliance with the single sample maximum shall be satisfied if turbidity levels do not exceed a rolling average of 5 NTU for any single 15 minute period. All Plants shall have a backup turbidity meter. See Subparagraph 4.3 for alternative sampling frequency should both turbidity meters fail and for contingency measures.
5-Day Biochemical Oxygen Demand (B.O.D.)	< = 10	mg/l	Weekly/Flow Weighted Composite	Less than or equal to 10 mg/l. Weekly means at least once every calendar week with sampling taken no more than ten (10) days and no less than four (4) days apart.
pH (field)	6-9	Standard Units	Weekly/Grab	Weekly means at least once every calendar week with sampling taken no more than ten (10) days and no less than four (4) days apart.
Total Nitrogen	< =10	mg/l	Monthly/Flow Weighted Composite	Less than or equal to 10 mg/l. Monthly means at least once every calendar month with monthly samples taken no more than forty-five (45) days and no less than fifteen (15) days apart.

Parameters	Reclaimed Water Quality Standard	Units	Routine Sampling Frequency/Type	Notes
Fecal Coliform	< = 2.2: 7 sample median and < = 23: single sample maximum	CFU/100 ml	Daily/Grab (See Notes)	Less than or equal to 2.2 CFU (“Colony Forming Units”) per 100 milliliters on a 7-sample median and less than or equal to 23 CFU per 100 milliliters on a single sample basis. Daily means every business day. However, if routine monitoring for turbidity indicates the need for a compliance verification sample on a “non-business day”, a fecal coliform sample shall also be taken. Sample median means the median of 7 consecutive samples taken on an every business day basis. See Subparagraph 4.3 for contingency measures.
Chlorine <sup>1</sup>	< = 0.05	mg/l	Monthly/Flow Weighted Composite	Less than or equal to 0.05 mg/l. Monthly means at least once every calendar month with monthly samples taken no more than forty-five (45) days and no less than fifteen (15) days apart. See Subparagraphs 4.1.3.2 and 4.1.3.3 for applicability. See also Subparagraph 4.3 for contingency measures.
Total Kjeldahl Nitrogen	N/A	mg/l	Monthly/Flow Weighted Composite	Monthly means at least once every calendar month with monthly samples taken no more than forty-five (45) days and no less than fifteen (15) days apart.
Nitrate plus Nitrite as Nitrogen	N/A	mg/l	Monthly/Flow Weighted Composite	Monthly means at least once every calendar month with monthly samples taken no more than forty-five (45) days and no less than fifteen (15) days apart.

<sup>1</sup> For Chandler only, notwithstanding this A+ Reclaimed Water Quality Standard for chlorine, upon the Community’s request, the Authorized Representatives of the Community and Chandler shall meet, discuss, and agree upon permissible residual water quality standard for chlorine concentration at the Chandler Point of Delivery.

4.1.2 The Water Producers shall at all times keep a pre-treatment program in place and comply with the terms of all State and Federal permits, laws, and regulations that are applicable to the treatment of wastewater.

4.1.3 The Water Producers shall measure the quality of Reclaimed Water to be Delivered at the point that the Reclaimed Water exits the Plant except that, if the discharge is subject to an Aquifer Protection Permit, or other similar permit, the Water Producer may use the sample measurement locations for a specific parameter as required or allowed by those permit(s) if the use of such alternative location results in the measurement of the same stream of Reclaimed Water to be made available for Delivery to the Community.

4.1.3.1 To be considered valid, all samples required to be taken pursuant to this Paragraph 4.0 shall (1) be collected in accordance with a QA/QC plan that meets State or EPA requirements including, by way of example, requirements regarding sample collection and preservation and holding times, and (2) be analyzed by a State or EPA approved method at a State or Federally licensed laboratory. Turbidity meters, pH meters and other field measuring devices shall be calibrated, operated and maintained in accordance with manufacturer's specifications.

4.1.3.2 If chlorine is used as the primary means of disinfection at a Plant, the Reclaimed Water produced by that Plant shall be de-chlorinated to meet the chlorine standard set forth in Table 1 of Subparagraph 4.1.1 prior to being made available for Delivery. If the means of de-chlorinating the Reclaimed Water to be made available for Delivery from this Plant become inoperable, the Water Producer shall be permitted to

continue to Deliver for so long as the contingency measures set forth in Subparagraph 4.3.5 are met.

4.1.3.3 If a disinfection method other than chlorine is primarily used at a Plant, the Water Producer operating that Plant shall not be required to sample for chlorine. If the means of disinfection become inoperable and chlorine is utilized as the back-up means of disinfection, the Water Producer shall be permitted to continue to Deliver for so long as the contingency measures set forth in Subparagraph 4.3.5 are met.

4.1.3.4 Nothing in this Paragraph 4.0 shall preclude a Water Producer from conducting routine sampling at a frequency greater than that set forth in Table 1 of Subparagraph 4.1.1. A Water Producer may conduct additional routine sampling pursuant to this Exchange Agreement and the analytical results of that additional sampling shall be reported to the Community pursuant to Subparagraph 4.5. The Water Producer's Authorized Representative shall notify the Authorized Representative of the Community that additional sampling is being conducted solely for operational purposes before such sampling is conducted. The record of such operational sampling shall be retained by the Water Producer for sixty (60) days but shall not be included in the evaluation of whether or not a Plant has experienced an Exceedance.

4.1.4 Delivery from a Plant that has not previously treated wastewater for at least six (6) months shall not commence until the Water Producer establishes that the Plant is producing Reclaimed Water meeting the A+ Reclaimed Water Quality Standards for at least seven (7) consecutive days. Delivery from a Plant that has been treating wastewater for six (6) months or more, but that has not previously Delivered, may commence immediately if the Reclaimed Water produced from that Plant then meets the

A+ Reclaimed Water Quality Standards and all standards set forth in the applicable State and Federal permits for that Plant.

4.1.5 If a Plant that has Delivered ceases treatment operations for a period greater than twenty-four (24) hours and was meeting all requirements set forth in this Paragraph 4.0 at the time it ceased treatment operations, the Water Producer shall take samples for B.O.D., pH, the Nitrogen Species and, as applicable, chlorine, within twenty-four (24) hours of resuming Delivery from that Plant. If there is an Exceedance, the Water Producer shall immediately notify the Authorized Representative of the Community of the Exceedance and conduct verification sampling pursuant to Subparagraph 4.2.

4.1.6 If a Plant that has Delivered ceases treatment operations for a period greater than twenty-four (24) hours and was not meeting all requirements set forth in this Paragraph 4.0 at the time it ceased treatment operations, the Water Producer shall not resume Deliveries from that Plant until Attainment is re-established pursuant to Subparagraph 4.4.

4.1.7 If a routine sample for a Parameter is not taken from a Plant as specified herein, the applicable Water Producer shall immediately notify the Authorized Representative of the Community of this issue at such time that the Water Producer reasonably becomes aware of such failure and the Water Producer shall be deemed to have an Exceedance. In such event, the applicable provisions of Subparagraphs 4.1.7.1 through 4.1.7.6 shall apply.

4.1.7.1 If a turbidity meter is not operable or fails to take a reading for a period of eight (8) hours, the Plant shall be deemed to have had an Exceedance and the

applicable Water Producer shall conduct verification sampling pursuant to Subparagraph 4.2.2.1.

4.1.7.2 If a Water Producer fails to take a routine sample for B.O.D. from a Plant as specified herein, that Plant shall be deemed to be in Non-Attainment as of the last date the missed sample could have been taken pursuant to Table 1 of Subparagraph 4.1.1 if either: (1) the analytical results of the next sample taken establish a B.O.D. level greater than or equal to 10 mg/l; or (2) the next sample to have been taken was also missed.

4.1.7.3 If a Water Producer fails to take a routine sample for pH from a Plant as specified herein, that Plant shall be deemed to be in Non-Attainment as of the last date the missed sample could have been taken pursuant to Table 1 of Subparagraph 4.1.1 if either: (1) the analytical result of the next sample taken establish a pH level less than six (6) or greater than nine (9) Standard Units; or (2) the next sample to have been taken was also missed.

4.1.7.4 If a Water Producer fails to take a routine sample for fecal coliform from a Plant as specified herein, the Plant shall, subject to Subparagraph 4.3.3, be deemed to be in Non-Attainment for the single sample maximum for fecal coliform, as of the last date the missed sample could have been taken pursuant to Table 1 of Subparagraph 4.1.1, if either: (1) the analytical results of the next sample taken from that Plant establish a fecal coliform level greater than or equal to 23 CFU/100 ml; or (2) the next sample to have been taken was also missed. When determining compliance with the seven (7) sample median A+ Reclaimed Water Quality Standard for fecal coliform where a Water

Producer has failed to take a routine sample for fecal coliform the missed sample shall be deemed to have a measurement greater than 2.2 CFU/100 ml.

4.1.7.5 If a Water Producer fails to take a routine sample for Total Nitrogen from a Plant as specified herein, the Plant shall be deemed to be in Non-Attainment as of the last date the missed sample could have been taken pursuant to Table 1 of Subparagraph 4.1.1 if: (1) the analytical results of the next sample taken establish a Total Nitrogen level greater than or equal to 10.0 mg/l; or (2) the analytical results of the monthly sample taken immediately prior to the missed sample established a Total Nitrogen level greater than 8.0 mg/l; or (3) the analytical results of the monthly sample taken immediately prior to the missed sample established a Total Nitrogen level less than or equal to 8.0 mg/l but the Water Producer fails to take a “make-up” sample within fifteen (15) days of the last date the missed sample could have been taken pursuant to Table 1 of Subparagraph 4.1.1; or (4) the Water Producer fails to take the next routine sample or Verification Sample, whichever would be required earlier.

4.1.7.6 If a Water Producer fails to take a routine sample for chlorine from a Plant as specified herein, that Plant shall, subject to Subparagraph 4.3.5, be deemed to be in Non-Attainment as of the last date the missed sample could have been taken pursuant to Table 1 of Subparagraph 4.1.1 if either: (1) the analytical results of the next sample taken establish a chlorine level greater than or equal to 0.05 mg/l; or (2) the next sample to have been taken was also missed.

#### 4.2 Verification Sampling.

4.2.1 In the event that an Exceedance is the result of the failure to conduct monitoring required pursuant to Subparagraph 4.1, the provisions of Subparagraph 4.1.7

shall apply. If, however, an Exceedance is established through monitoring conducted pursuant to Subparagraph 4.1 demonstrating that the Reclaimed Water produced by a Plant has failed to satisfy the applicable A+ Reclaimed Water Quality Standards for one or more Parameters, then:

4.2.1.1 The Water Producer shall conduct verification sampling as soon as reasonably possible and, except for verification sampling for fecal coliform, in no event later than twenty-four (24) hours after learning of the Exceedance. A verification sample for fecal coliform shall be taken no later than eight (8) hours after learning of the Exceedance; and

4.2.1.2 The Water Producer responsible for taking the sample shall immediately notify the Authorized Representative of the Community of that fact, identifying the time, place, and nature of the Exceedance.

4.2.1.2.1 Notification shall be by telephone if during normal business hours, by facsimile if not during normal business hours, or by other effective methods to provide actual notice. Notice shall be provided in a manner to allow the Authorized Representative of the Community to participate in, or to observe the taking of a verification sample.

4.2.2 The verification sample shall be analyzed to determine whether it meets the A+ Reclaimed Water Quality Standards for the Parameter(s) in question and Attainment shall be determined by the analytical results of the verification sample(s). The Water Producer shall ensure that it receives the results of the laboratory analysis of the verification sample(s) for B.O.D., Nitrogen Species and, as applicable, chlorine within seven (7) days from the time that the samples were taken and within five (5) days

from the time that any other A+ Reclaimed Water Quality Standard parameter was taken. However, if the fifth (5th) or seventh (7th) day falls on a weekend or holiday, results must be received by the next business day. The Water Producer shall notify the Authorized Representative of the Community of the analytical results of the verification sample as soon as reasonably possible, and in no event later than twenty-four (24) hours after receiving the results of the verification sample from the laboratory. Notification shall be by telephone if during normal business hours, by facsimile if not during normal business hours, or other effective methods to provide actual notice.

4.2.2.1 Verification sampling for turbidity shall be conducted by taking three (3) grab samples at eight (8) hour intervals for the twenty-four (24) hour period following a Water Producer's learning of an Exceedance for turbidity. Subject to the provision of Subparagraph 4.3.3, a Plant shall be deemed to be in Non-Attainment if either the average of the analytical results for the three (3) grab samples establish a turbidity level greater than or equal to two (2) NTU or the analytical results for any one of the grab samples taken establish a turbidity level greater than or equal to 5 NTU.

4.2.2.2 The verification sample used to establish compliance with the single sample maximum A+ Reclaimed Water Quality Standard for fecal coliform shall be collected in the same manner and from the same location as, and analyzed pursuant to the same method as, that utilized for the routine sample taken pursuant to Subparagraph 4.1 that revealed an Exceedance. There is no verification sample permitted for establishing compliance with the seven (7) sample median A+ Reclaimed Water Quality Standard for fecal coliform. If the analytical results of either the verification sample taken pursuant to this Subparagraph 4.2.2.2 to determine compliance with the single sample A+ Reclaimed

Water Quality Standard for fecal coliform or the routine samples taken pursuant to Subparagraph 4.1 to determine compliance with the seven (7) sample median A+ Reclaimed Water Quality Standard for fecal coliform do not meet the A+ Reclaimed Water Quality Standards for fecal coliform, the Plant, subject to Subparagraph 4.3.3, shall be deemed to be in Non-Attainment.

4.2.2.3 A verification sample for Total Nitrogen, chlorine (as applicable), B.O.D. or pH shall be collected in the same manner and from the same location, and analyzed pursuant to the same method, as that utilized for the routine sample taken pursuant to Subparagraph 4.1 that revealed an Exceedance.

4.2.3 If verification sampling reveals Attainment, no additional action shall be required and the Water Producer shall continue to Deliver. If verification sampling was not conducted, or if conducted reveals Non-Attainment for any Parameter, or if the laboratory does not report the analytical results of the verification sampling within the time frame established in Subparagraph 4.2.2 above, the Plant shall be in Non-Attainment and the Water Producer shall immediately undertake the specific contingency measures described in Subparagraph 4.3.

4.2.4 Non-Attainment shall not be deemed to have occurred if the laboratory acknowledges in writing, that it made an error in its analysis and sets forth the basis of that error. In such case, the Water Producer shall immediately:

4.2.4.1 Notify the Authorized Representative of the Community of these issues;

4.2.4.2 Provide such acknowledgment to the appropriate Authorized Representatives; and

4.2.4.3 Repeat the verification sampling process in accordance with this Subparagraph 4.2.

4.2.5 Additionally, Non-Attainment shall not be deemed to have occurred if the Water Producer demonstrates to the satisfaction of the Authorized Representative of the Community that the apparent failure to meet all A+ Reclaimed Water Quality Standards criteria resulted from error(s) in sampling, analysis or statistical evaluation and repeats the verification sampling process in accordance with this Subparagraph 4.2.

4.2.6 If the results of the repeat verification sampling described in Subparagraphs 4.2.4 or 4.2.5 establish Non-Attainment, the Water Producer shall, regardless of whether analytical results establishing Non-Attainment resulted from error(s) in sampling, analysis or statistical evaluation, undertake the specific contingency measures described in Subparagraph 4.3.

4.2.7 If a Plant is found to be in Non-Attainment after undertaking the verification activities described in this Subparagraph 4.2, such Plant shall be deemed to have been in Non-Attainment from the date upon which the routine sample was taken pursuant to Subparagraph 4.1.

#### 4.3 Contingency Measures.

4.3.1 The Water Producers, the Community, and the United States recognize that there may be circumstances not expressly covered in this Paragraph 4.0 where permitting the Water Producer to continue to Deliver may be beneficial notwithstanding either the Non-Attainment status of a Plant or a failure to meet some other requirement set forth in this Exchange Agreement. The Water Producer and the Community agree to consult with one another as soon as practicable through their Authorized Representatives

after a verification sample is taken for the purpose of determining whether circumstances exist whereby continued Delivery on a case-by-case basis is in the best interest of the Water Producer and the Community, notwithstanding either the Non-Attainment status of a Plant or a failure to meet some other requirement set forth in this Exchange Agreement. Nothing in this Subparagraph 4.3.1 shall be deemed to require the Community to allow a Water Producer to continue Deliveries from a Plant that is in Non-Attainment status. The election to permit continued Delivery from that Plant under these circumstances shall be at the sole discretion of the Community. Any such agreement to allow continued Deliveries pursuant to this Subparagraph 4.3.1 shall be in writing and signed by the Authorized Representatives of the Water Producer and the Community. This case-by-case consideration to permit continued Deliveries from a Plant in Non-Attainment may include, but is not limited to, an evaluation of:

4.3.1.1 The length of time needed to address the cause of Non-Attainment or the failure to meet some other requirement set forth in this Exchange Agreement;

4.3.1.2 The availability of additional water for blending before end use and/or the ability to reduce the amount of Reclaimed Water Delivered;

4.3.1.3 The extent of deviation from A+ Reclaimed Water Quality Standards and the potential for impact upon human health, the environment and suitability for end use given the amount of blending with other water before end use;

4.3.1.4 The potential safeguards available by increasing monitoring frequency during Non-Attainment;

4.3.1.5 The potential to divert the Exchange Reclaimed Water to other end uses within the Community;

4.3.1.6 State and EPA standards applicable for the parameter(s) of concern; and

4.3.1.7 The Community's need for Exchange Reclaimed Water.

4.3.2 Each Plant shall be designed and constructed so as to be capable of diverting, curtailing, or stopping Delivery at any time or times that the Plant is in a Non-Attainment status. If a Plant is in Non-Attainment, the Water Producer shall, subject to Subparagraph 4.3.1, undertake the contingency measures specified in Subparagraphs 4.3.2.1, 4.3.2.2, and 4.3.3 through 4.3.5.

4.3.2.1 Upon receiving the notification provided pursuant to Subparagraph 4.2 that a Chandler or a Mesa Plant that is Delivering is in a Non-Attainment status, the Authorized Representative of the Community shall notify the Authorized Representative of the Water Producer in writing within twenty-four (24) hours whether it will continue to accept Delivery from that Plant prior to its re-establishing Attainment for that Plant pursuant to Subparagraph 4.4. If the Authorized Representative of the Community fails to notify the Authorized Representative of its determination under this Subparagraph 4.3.2.1 within twenty-four (24) hours, the Community shall be deemed to have refused to accept continued Delivery from that Plant during the period of Non-Attainment.

4.3.2.2 The Water Producer shall be permitted to continue to Deliver if the Community's Authorized Representative notifies the Water Producer's Authorized Representative in writing that the Community will accept such Delivery.

4.3.2.3 Unless the Authorized Representative of the Community notifies the Authorized Representative of the Water Producer that it will accept continued Deliveries from a Plant while in a Non-Attainment status, the Water Producer shall as quickly as practicable, and in no event longer than four (4) hours, cease Delivery from that Plant

until Attainment is re-established for that Plant or the Authorized Representative of the Community notifies the Authorized Representative of the Water Producer that it will accept Delivery from that Plant while in a Non-Attainment status. The Water Producer may, at its discretion, substitute Delivery of Reclaimed Water produced from another Plant, but not from the Lone Butte Plant, that is in Attainment.

4.3.3 If sampling pursuant to Subparagraph 4.2 establishes that the A+ Reclaimed Water Quality Standards are not met for either turbidity or fecal coliform, the Plant shall be in Attainment if:

4.3.3.1 The Water Producer samples for Escherichia coli (E.Coli) every day during the Exceedance at the same location as samples for fecal coliform are taken;

4.3.3.2 No sample reveals the presence of E.Coli in the Exchange Reclaimed Water greater than 235 colony forming units per 100 milliliters of Reclaimed Water; and

4.3.3.3 The Water Producer has failed to satisfy the A+ Reclaimed Water Quality Standards for turbidity or fecal coliform for no more than five (5) consecutive days or thirty (30) days per Year, as determined by verification sampling conducted pursuant to Subparagraph 4.2 of this Exchange Agreement.

4.3.4 If neither the primary nor backup turbidimeters at a Plant can measure turbidity on a continuous basis, the Plant, if otherwise in Attainment, shall remain in Attainment for turbidity if (1) the Water Producer establishes through taking grab samples at eight (8) hour intervals that the single sample maximum and the twenty-four (24) hour average A+ Reclaimed Water Quality Standards for turbidity for that Plant are satisfied and (2) the turbidimeters at a Plant that is Delivering have not been out of service for more than five (5) consecutive days or more than thirty (30) days during the

Year. During the period that the turbidimeters are not functioning properly, Attainment for the twenty-four (24) hour turbidity standard shall be determined by calculating the twenty-four (24) hour rolling average of the grab samples.

4.3.5 If chlorine levels are above the A+ Reclaimed Water Quality Standards for chlorine because (1) a primary, non-chlorination, disinfection process at a Plant is down for maintenance or repair and chlorination is the back-up means of disinfection; or (2) chlorination is the primary means of disinfection at a Plant and the de-chlorination process is down for maintenance or repair, the Plant shall be in Attainment if all other A+ Reclaimed Water Quality Standards are met, and a disinfection process utilizing chlorine, without any de-chlorination, is used for no more than ten (10) consecutive days or more than a total of thirty (30) days per Year.

4.3.6 In addition to the other notice provisions provided in this Subparagraph 4.3 the Water Producer shall submit an exception report regarding any period of Non-Attainment to the Authorized Representative of the Community within thirty (30) days after re-establishing Attainment. The exception report shall include:

4.3.6.1 A description of the nature and cause(s) of the Non-Attainment event necessitating the implementation of a specific contingency measure;

4.3.6.2 The starting and ending dates of the Non-Attainment event; and,

4.3.6.3 A description of the specific contingency measures and any other action taken to: (1) mitigate the effects of the Non-Attainment event, and (2) minimize the likelihood of recurrence.

4.4 Re-establishing Attainment.

4.4.1 For all Parameters other than turbidity, the Water Producer shall be deemed to have re-established Attainment for a Plant when the analytical results from two (2) consecutive samples, taken no less than twelve (12) hours and no more than thirty-six (36) hours apart, meet the A+ Reclaimed Water Quality Standard for the Parameter(s) of concern. The Water Producer shall be deemed to have re-established Attainment with the A+ Reclaimed Water Quality Standard for turbidity for a Plant when the twenty-four (24) hour average and single sample maximum standards for turbidity have been met for a twenty-four (24) hour period following the determination of Non-Attainment for turbidity. The Water Producer shall provide the analytical results of the sampling re-establishing Attainment to the Authorized Representative of the Community. If the Water Producer ceased Delivery from a Plant during Non-Attainment, the Water Producer shall notify the Authorized Representative of the Community after Attainment has been re-established for a Plant and specify when the Water Producer will be ready to resume Delivery and the anticipated daily flow rate of that Delivery. Upon receipt of the foregoing notice, the Community shall utilize its best efforts to take those actions necessary to permit the resumption of Delivery from that Plant in accordance with the notice provided by the appropriate Water Producer including, but not limited to, the Community's arranging for sufficient water for blending pursuant to Subparagraphs 5.12 and 6.13. Except for circumstances identified in Subparagraph 6.6.2, Mesa shall not be required to wait more than twenty-four (24) hours from the time it provides its notice of re-establishment of Attainment for such Plant and readiness to resume Delivery before Mesa may resume Delivery. Except for circumstances identified in Subparagraph 5.6.2, Chandler shall not be required to wait more than twenty-four (24) hours from the time it

provides its notice of re-establishment of Attainment for that Plant and readiness to resume Delivery from that Plant before Chandler may resume Delivery.

4.5 Record Keeping and Reporting.

4.5.1 The Water Producers shall each maintain accurate records of monitoring that reflect the quality and quantity of the Reclaimed Water they Deliver. Copies of all such records and any compilations thereof shall be retained in accordance with any permits associated with a Delivery or, if not otherwise required, for at least three (3) years.

4.5.2 On a monthly basis, unless the Authorized Representatives of the Community and the Water Producer otherwise agree, the Water Producer shall provide the Authorized Representative of the Community with copies of all water quality, field monitoring and sampling records including QA/QC data, QA/QC verification, and chain of custody documentation conducted or prepared pursuant to this Subparagraph 4.5. The Water Producers shall also provide to the Authorized Representative of the Community all summary reports regarding the quality of the Reclaimed Water being Delivered from each Plant that are submitted to a State or Federal regulatory agency pursuant to any Aquifer Protection Permit or other permit associated with the Delivery at the same time that these summary reports are submitted to that State or Federal regulatory agency.

4.5.3 During the first three (3) full months following a Water Producer's initial Delivery of Reclaimed Water, the Water Producer shall send, on a monthly basis, copies of all summary report support records regarding Reclaimed Water quality, field monitoring and sampling including QA/QC data, and QA/QC verification, and chain of custody documentation conducted or prepared pursuant to any Aquifer Protection Permit

Final Execution Version  
October 21, 2005

or other permit associated with the Reclaimed Water being Delivered from a Plant to Community's Authorized Representative. Thirty (30) to ninety (90) days prior to initiating Delivery the Water Producer shall send copies of the pre-treatment programs adopted by each Water Producer to the Community. At the time the Water Producer sends its annual pre-treatment program report to EPA or any similar State authority, the Water Producer shall send the same to the Community. Similarly, at the time that any Water Producer makes any changes, modifications, amendments or revisions to its pre-treatment program(s), it shall send copies of the same to the Community. Commencing with the fourth full month after a Water Producer first Delivers, it shall no longer be required to send any summary report support records relating to any Aquifer Protection Permit or other permit regarding the Delivery to the Authorized Representative of the Community unless the Authorized Representative of the Community specifically request that some or all of such summary report support records continue to be sent.

4.5.4 The Community shall retain the right to view all Reclaimed Water quality documents maintained by the Water Producer pursuant to this Exchange Agreement or any State or Federal permit relating to the quality of the Reclaimed Water being Delivered pursuant to this Exchange Agreement upon providing one (1) business day notice to the Water Producer.

4.5.5 The Water Producers shall notify the Authorized Representative of the Community of any significant non-compliance by industrial users with the Water Producer's pre-treatment program within twenty-four (24) hours after learning of such significant non-compliance. For the purposes of this Subparagraph 4.5.5, such significant non-compliance means:

4.5.5.1 Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

4.5.5.2 TRC violations, defined here as those in which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter taken during a six (6) month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH) unless the Water Producer's pre-treatment program permits higher BOD or TSS levels;

4.5.5.3 Any other violation of a pre-treatment effluent limit (daily maximum or longer-term average) that the Water Producer determines has caused, alone or in combination with other discharges, interferences or pass through (including endangering the health of Plant personnel or the general public);

4.5.5.4 Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Water Producer's exercise of its emergency authority to halt or prevent such a discharge to a Plant;

4.5.5.5 Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

4.5.5.6 Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

4.5.5.7 Failure to accurately report non-compliance; or

4.5.5.8 Any other violation or group of violations that the Water Producer determines will adversely affect the operation or implementation of the local pre-treatment program.

4.6 Tour of Discharging Plants and Joint Monitoring.

4.6.1 The Authorized Representative of the Community with his or her technical assistants shall have the right, upon providing one (1) business day notice to the Water Producer, to tour those Plants Delivering at the time of the notice or at the time of the tour and to observe all monitoring and measuring devices and records required or used pursuant to this Exchange Agreement. Upon such request, the Water Producer shall provide the Authorized Representative of the Community with split samples taken for monitoring purposes. The Authorized Representative of the Community shall, upon giving four (4) hours notice to the Water Producer during normal working hours, each be entitled to independently take samples of Exchange Reclaimed Water and Chandler Contributed Reclaimed Water provided that a split sample is provided to the Water Producer. If analysis of one split sample indicates no Exceedance or Attainment while an analysis of the other split sample reveals either an Exceedance or Non-Attainment, the Authorized Representative of the Water Producer shall cooperate with the Authorized Representative of the Community to resolve the discrepancy.

4.7 Relative Obligations.

4.7.1 The notice, reporting and approval provisions relating to Mesa Reclaimed Water shall apply only to Mesa and the Community and the notice, reporting

and approval provisions relating to Chandler Reclaimed Water shall apply only to Chandler and the Community.

**5.0 Delivery and Acceptance of Chandler Reclaimed Water/Scheduling and Delivery of Community CAP Exchange Water**

**5.1 Exchange of Water and Term of Agreement.**

5.1.1 Chandler shall be required to Deliver, and the Community shall be required to accept Delivery of, Chandler Reclaimed Water in accordance with the terms and conditions of this Exchange Agreement.

5.1.2 In each Year after the Year in which Chandler has initiated Delivery of Chandler Reclaimed Water in accordance with Subparagraph 5.2, Chandler shall make available for Delivery, and the Community shall accept Delivery of, four thousand five hundred (4,500) acre-feet of Chandler Contributed Reclaimed Water in accordance with the terms and conditions of this Exchange Agreement. In addition, in each Year after Chandler initiates Delivery of Chandler Reclaimed Water in accordance with Subparagraph 5.2, Chandler shall make available for Delivery, and the Community shall accept Delivery of, up to eleven thousand two hundred (11,200) acre-feet of Chandler Exchange Reclaimed Water in accordance with the terms and conditions of this Exchange Agreement. In exchange for the Chandler Exchange Reclaimed Water, the Community shall make available for delivery to Chandler, up to eight thousand nine hundred seventy (8,970) acre-feet of Community CAP Exchange Water in accordance with the terms and conditions of this Exchange Agreement.

5.1.3 Chandler shall be entitled to eight-tenths (0.8) acre-foot of Community CAP Exchange Water for every one (1.0) acre-foot of Chandler Exchange Reclaimed

Water that it schedules for Delivery in accordance with Subparagraph 5.5, up to the limits set forth in Subparagraph 5.1.2.

5.1.4 If, at any time, Chandler has made Chandler Exchange Reclaimed Water available for Delivery and the Community is required to accept such Delivery in accordance with the terms and conditions of this Exchange Agreement, but does not do so, Chandler shall be entitled to receive credit in accordance with Subparagraph 5.6.3.

5.1.5 The exchange between the Community and Chandler shall begin after all required conditions described in Subparagraph 5.10 have occurred and in accordance with Subparagraphs 5.2 and 5.3. It shall continue thereafter for so long as the Community's CAP Water Delivery Contract, and any extension or amendment thereof, is in effect and the Community is eligible to receive sufficient quantities of Community CAP Exchange Water to satisfy its obligations under this Exchange Agreement and the Settlement Agreement remains in effect as among the Community, the United States on behalf of the Community and Chandler. Chandler's obligation to Deliver Chandler Contributed Reclaimed Water shall be independent of Chandler's obligation to Deliver Chandler Exchange Reclaimed Water, and shall continue for so long as the Settlement Agreement remains in effect as among the Community, the United States on behalf of the Community and Chandler.

5.1.6 Unless otherwise mutually agreed to in writing by Authorized Representatives of the Community and Chandler, Chandler Reclaimed Water shall be Delivered at the Chandler Point of Delivery as described at Subparagraph 5.18.

5.1.7 Nothing in this Exchange Agreement shall be construed as a limitation on Chandler's and the Community's ability to discuss, and engage in, separate agreements

Final Execution Version  
October 21, 2005

for the exchange or sale of Reclaimed Water and CAP Water; provided that such arrangements shall not be considered to be a part of, or actions flowing from, this Exchange Agreement.

5.2 Initial Delivery.

5.2.1 If Chandler, at the time all required conditions described in Subparagraph 5.10 have occurred, is not selling or exchanging water to or with the Community under the Chandler Delivery Agreement, the Authorized Representative of Chandler shall, not later than thirty (30) calendar days thereafter, notify the Authorized Representative of the Community of the date upon which Chandler will be ready to begin initial Deliveries. Unless otherwise mutually agreed to in writing by the Authorized Representatives of the Community and Chandler, Delivery shall not begin sooner than thirty (30) calendar days after such notice has been given, nor shall it begin later than ninety (90) calendar days after all required conditions described in Subparagraph 5.10 have occurred. Under these circumstances, Chandler shall make its initial Deliveries in accordance with Subparagraph 5.2.2.

5.2.2 If Chandler, at the time all of the required conditions described in Subparagraph 5.10 have occurred, is not selling or exchanging water to or with the Community pursuant to the Chandler Delivery Agreement, the Authorized Representatives of Chandler and the Community shall meet within thirty (30) calendar days after Chandler provides its notice of readiness to begin initial Deliveries, as provided in Subparagraph 5.2.1, to schedule the initial Delivery of Chandler Reclaimed Water. During the partial Year that Chandler initially makes Chandler Reclaimed Water available for Delivery pursuant to this Paragraph 5.2, Chandler shall make "x/12 x 4,500"

Final Execution Version  
October 21, 2005

acre-feet of Chandler Contributed Reclaimed Water available for Delivery, where "x" is the number of full months remaining in the Year after initial Deliveries begin. In addition, for that first partial year the Authorized Representative of the Community and Chandler may agree to the Delivery of Chandler Exchange Reclaimed Water in exchange for Community CAP Exchange Water. Any such agreement shall be in writing and in accordance with the provisions otherwise applicable to this Exchange Agreement except that Chandler Exchange Reclaimed Water Delivered during such first partial year shall be treated as Chandler Exchange Reclaimed Water Delivered during the first full Year of Deliveries for purposes of when Chandler will actually receive Community CAP Exchange Water attributable to its Delivery during the first partial Year.

5.2.3 If Chandler, at the time all required conditions described in Subparagraph 5.10 have been occurred, is selling or exchanging water to or with the Community pursuant to the Chandler Delivery Agreement, Chandler and the Community shall continue to operate under the terms and conditions of the Chandler Delivery Agreement for the balance of that current Year and Chandler shall not be required during that partial Year to make Chandler Reclaimed Water available for Delivery. In the immediately ensuing Year Chandler shall make its initial Deliveries by making available for Delivery: (1) four thousand five hundred (4,500) acre-feet of Chandler Contributed Reclaimed Water; and (2) Chandler Exchange Reclaimed Water in an amount equal to not less than five hundred (500) acre-feet but not more than one thousand five hundred (1,500) acre-feet. Delivery of additional Chandler Exchange Reclaimed Water may be agreed upon by the Authorized Representatives. In subsequent Years, the quantity of Chandler Exchange Reclaimed Water to be made available for Delivery shall be increased in accordance with

Subparagraph 5.3.2. If, after using its best efforts, the Community is unable to order sufficient quantities of Community CAP Exchange Water to satisfy the requirements of Subparagraph 5.5.3.3 in the first full Year that Chandler makes Chandler Exchange Reclaimed Water available for Delivery, the shortage shall be reconciled in accordance with Subparagraph 5.9.

5.3 Chandler Reclaimed Water to be Made Available for Delivery in all Years After Initial Delivery.

5.3.1 In each Year following the Year in which Chandler initially Delivers in accordance with Subparagraph 5.2 Chandler shall make available for Delivery, and the Community shall accept Delivery of, four thousand five hundred (4,500) acre-feet of Chandler Contributed Reclaimed Water.

5.3.2 The period described in this Subparagraph 5.3.2 shall be known as the Chandler Ramp Up Period. During this period, unless otherwise agreed to in writing by the Authorized Representatives of the Community and Chandler, and except as provided in Subparagraph 5.3.2.1, Chandler shall, in each Year following the Year in which Chandler initially Delivers Chandler Reclaimed Water in accordance with Subparagraph 5.2, increase the quantity of Chandler Exchange Reclaimed Water that it makes available for Delivery by no less than five hundred (500) acre-feet and no more than one thousand five hundred (1,500) until such time that Chandler is annually making eleven thousand two hundred (11,200) acre-feet of Chandler Exchange Reclaimed Water available for Delivery pursuant to this Exchange Agreement.

5.3.2.1 During the Chandler Ramp Up Period, Chandler may make less Chandler Exchange Reclaimed Water available for Delivery than is otherwise required by Subparagraph 5.3.2, if:

5.3.2.1.1 The Community reduces the quantity of Community CAP Exchange Water available to Chandler pursuant to Subparagraph 5.11, but only to the extent necessary to maintain the exchange ratio of eight-tenths (0.8) acre-foot of Community CAP Exchange Water for each one (1.0) acre-foot of Chandler Exchange Reclaimed Water; or

5.3.2.1.2 The average annual increase in Deliveries of Chandler Exchange Reclaimed Water after the initial Delivery is greater than five hundred (500) acre-feet and the quantity of Chandler Exchange Reclaimed Water scheduled for Delivery in that Year is not less than the quantity Delivered in the immediately preceding Year, but only to the extent that such reduced increase would not result in the average increase of water Delivered for all Years after the initial Delivery to fall below five hundred (500) acre-feet; or

5.3.2.1.3 Insufficient Effluent is produced within Chandler for Chandler to meet such increased Delivery obligations, but only to the extent that such insufficiency prevents Chandler from increasing its Deliveries pursuant to Subparagraph 5.3.2.

5.3.3 After the Chandler Ramp Up Period, unless otherwise agreed to in writing by the Authorized Representatives of the Community and Chandler and subject to the provisions of Subparagraph 5.3.3.1, Chandler shall make eleven thousand two hundred (11,200) AFY of Chandler Exchange Reclaimed Water available for Delivery.

5.3.3.1 Chandler may make less Chandler Exchange Reclaimed Water available for Delivery than is otherwise required by Subparagraph 5.3.3, if:

5.3.3.1.1 The Community reduces the quantity of Community CAP Exchange Water available to Chandler pursuant to Subparagraph 5.11, but only to the extent

Final Execution Version  
October 21, 2005

necessary to maintain the exchange ratio of eight-tenths (0.8) acre-foot of Community CAP Exchange Water for each one (1.0) acre-foot of Chandler Exchange Reclaimed Water; or

5.3.3.1.2 Insufficient Effluent is produced within Chandler for Chandler to meet such Delivery obligation, but only to the extent that such insufficiency prevents Chandler from making available for Delivery the quantity that would otherwise be required by Subparagraph 5.3.3.

5.4 Meetings.

5.4.1 On or before August 1 of the first full Year during which Chandler is obligated to Deliver under this Exchange Agreement and in each Year thereafter the Authorized Representatives of the Community and Chandler shall meet to discuss the following:

5.4.1.1 Operational adjustments necessary to ensure that Chandler Delivers, and the Community accepts Delivery of, the quantity of Chandler Reclaimed Water that Chandler is obligated to Deliver in the then current Year;

5.4.1.2 Anticipated dry-up schedules and any other planned OM&R activities for the balance of the then current Year and for the following Year that may limit their ability to perform under this Exchange Agreement. Chandler and the Community shall use their best efforts to coordinate such activities to minimize the disruption to the exchange. If these efforts to coordinate fail and the Community's Water Delivery System will be under repair when Chandler is otherwise able to Deliver, the Authorized Representative of the Community may accept Delivery by such other means as are available;

5.4.1.3 Whether the quantity of Community CAP Exchange Water to be made available to Chandler during the following Year may be reduced in accordance with Subparagraph 5.11;

5.4.1.4 Whether the Community anticipates that it will be unable to schedule sufficient quantities of blending water to satisfy the requirements of Subparagraph 5.12;

5.4.1.5 The amount of Chandler Reclaimed Water that will be made available for Delivery during the following Year, which amount shall be consistent with the amounts described at Subparagraphs 5.3; and

5.4.1.6 The forecast of the quantity of Chandler Reclaimed Water anticipated to be made available for Delivery for the succeeding two Years.

5.4.2 In addition to the scheduling meetings required by Subparagraphs 5.4.1 and 5.5.2, the Authorized Representatives of the Community and Chandler shall consult with one another on a quarterly basis during the first two (2) Years following Chandler's initial Delivery, with the first such consultation to occur no less than fifteen (15) calendar days after the date of such initial Delivery, and thereafter as they deem necessary to identify and resolve operational issues. The Authorized Representatives of the Community and Chandler shall also consult with one another during any operational emergency as soon as reasonably practicable after learning of such emergency.

## 5.5 Delivery Schedules.

5.5.1 On or before September 1 of each year, and after the meeting required by Subparagraph 5.4.1, the Authorized Representative of Chandler shall provide the Authorized Representative of the Community with a proposed schedule for Delivery setting forth Chandler's intended Delivery of Chandler Reclaimed Water for the

following Year, on a month-by-month basis. Unless otherwise agreed to in writing by the Authorized Representatives of Chandler and the Community, Deliveries are to be made on a continuous flow basis taking into account the existence of Diurnal Flow. The ratio of Chandler Contributed Reclaimed Water Delivered to Chandler Exchange Reclaimed Water Delivered shall be deemed to remain constant for all days that Deliveries are made.

5.5.2 The Authorized Representatives of the Community and Chandler shall meet within fourteen (14) calendar days after the proposed schedule for Delivery has been provided and shall, at that meeting discuss and agree upon the final schedule. The final schedule for the immediately ensuing Year shall be in such form as is agreed upon by the Authorized Representatives of the Community and Chandler and shall identify:

5.5.2.1 The quantities of Chandler Exchange Reclaimed Water and Chandler Contributed Reclaimed Water scheduled to be made available for Delivery for that Year, pursuant to Subparagraph 5.3, adjusted in accordance with the reconciliation provisions of Subparagraph 5.9, and divided equally for each calendar quarter of that Year; and

5.5.2.2 The average daily quantity of Chandler Reclaimed Water scheduled to be made available for Delivery for each calendar quarter of a Year which shall be calculated by dividing the quantity of Chandler Reclaimed Water to be made available for Delivery during that calendar quarter by the number of days that Chandler Reclaimed Water is scheduled to be Delivered during that calendar quarter.

5.5.3 At the same meeting required by Subparagraph 5.5.2, the Authorized Representatives of the Community and Chandler shall prepare:

5.5.3.1 A schedule for delivery of Community CAP Exchange Water to Chandler, on both a Yearly and month-by-month basis, for the immediately ensuing Year to be

Final Execution Version  
October 21, 2005

submitted by the Community to Chandler, the Secretary, and the CAP Operating Agency in the notice required pursuant to Subparagraph 5.7; and

5.5.3.2 A preliminary schedule for delivery of Community CAP Exchange Water to Chandler, on a Yearly basis, for the two years following the immediately ensuing year to be submitted by the Community to Chandler, the Secretary and the CAP Operating Agency in the notice required pursuant to Subparagraph 5.7.

5.5.3.3 The schedule for the delivery of Community CAP Exchange Water to Chandler in the immediately ensuing Year shall reflect a Yearly delivery to Chandler of eight-tenths (0.8) acre-foot of Community CAP Exchange Water for each one (1.0) acre-foot of Chandler Exchange Reclaimed Water scheduled to be Delivered to the Community for that Year pursuant to Subparagraph 5.5.2.1. The preliminary schedule for the delivery of Community CAP Exchange Water to Chandler for the two years following the immediately ensuing year shall reflect a Yearly delivery to Chandler of eight-tenths (0.8) acre-foot of Community CAP Exchange Water for each one (1.0) acre-foot of Chandler Exchange Reclaimed Water anticipated to be scheduled for Delivery to the Community in those Years pursuant to Subparagraph 5.3. The quantity of Community CAP Exchange Water to be scheduled for delivery to Chandler shall be determined prior to applying the reconciliation provisions of Subparagraph 5.9.

5.5.3.4 The month-by-month schedule for the delivery of Community CAP Exchange Water to Chandler is not required to maintain a ratio of eight-tenths (0.8) acre-foot of Community CAP Exchange Water for each one (1.0) acre-foot of Chandler Exchange Reclaimed Water scheduled to be or actually Delivered in any month, provided that the ratio of eight-tenths (0.8) acre-foot of Community CAP Exchange Water to one

(1.0) acre-foot of Chandler Exchange Reclaimed Water scheduled for Delivery is maintained for the Year excluding Deliveries made pursuant to the reconciliation provisions described at Subparagraph 5.9.

5.5.4 In addition to modifying schedules for the Delivery of Chandler Reclaimed Water for the reasons described at Subparagraphs 5.6.5 and 5.6.6, Authorized Representatives of the Community and Chandler may, for any reason and at any time, agree to amend or modify the final schedules for the Delivery of Chandler Reclaimed Water during any Year.

5.6 Delivery of and Duty to Accept Chandler Reclaimed Water and Notice Requirements.

5.6.1 Except as provided at Subparagraph 4.3.2 and 5.6.9, all Chandler Reclaimed Water made available for Delivery shall be from a Plant that is in Attainment. Subject to the provisions of this Subparagraph 5.6.1, Chandler shall make Chandler Reclaimed Water available for Delivery in accordance with the schedule developed pursuant to Subparagraph 5.5. However, Chandler shall be excused from Delivering in accordance with the schedule developed pursuant to Subparagraph 5.5 under the conditions described in Subparagraphs 5.6.1.1 through 5.6.1.4, but shall Deliver as much of the Chandler Reclaimed Water scheduled for Delivery as reasonably possible in light of such conditions.

5.6.1.1 The Chandler Plant or Plants producing Reclaimed Water available for Delivery is, or are, in Non-Attainment or is, or are, in Exceedance.

5.6.1.2 During emergencies or Force Majeure Events, as defined in Subparagraph 5.16, which prevent Chandler from making such Deliveries.

5.6.1.3 During periods when a Chandler Plant or off-Reservation pipeline located within Chandler, necessary to enable Chandler to make a Delivery, is down for repair provided such repair was not due to Chandler's failure to maintain these facilities.

5.6.1.4 During periods when the Community does not accept Delivery pursuant to Subparagraph 5.6.2.

5.6.2 Subject to the provisions of this Subparagraph 5.6.2, the Community shall accept Delivery of Chandler Reclaimed Water made available for Delivery in accordance with the schedule developed pursuant to Subparagraph 5.5. However, the Community shall be excused from accepting Delivery in accordance with the schedule developed pursuant to Subparagraph 5.5 under the conditions described in Subparagraphs 5.6.2.1 through 5.6.2.6, but shall accept Delivery of as much of the Chandler Reclaimed Water scheduled for Delivery as reasonably possible in light of such conditions.

5.6.2.1 During scheduled periods of canal dry-up or other OM&R activities scheduled in accordance with Subparagraph 5.13.

5.6.2.2 During emergencies or Force Majeure Events, as defined in Subparagraph 5.16, which prevent the Community from accepting such Deliveries. Emergencies relating to stormwater runoff are limited to 50-year or greater flood events requiring the Community to evacuate water from its canal.

5.6.2.3 During periods when the Community's Water Delivery System, including the Chandler Pipeline, necessary to enable the Community to accept Delivery, is down for repair for a reasonable time provided such repair was not due to the Community's failure to maintain these facilities.

5.6.2.4 During periods when the Chandler Reclaimed Water to be Delivered is produced by a Plant that is in Non-Attainment, except as provided at Subparagraphs 4.3.2 and 5.6.9.

5.6.2.5 When Chandler is not in compliance with the water quality provision set forth in applicable permits or laws regarding the treatment of waste water.

5.6.2.6 When sufficient quantities of water are not available for blending pursuant to the requirements of Subparagraph 5.12.

5.6.3 Where the Community is unable to or does not accept Delivery, or where Chandler is unable to or does not Deliver, the following shall apply:

5.6.3.1 If the Community does not accept Delivery of Chandler Reclaimed Water for reasons other than as described in Subparagraph 5.6.2, Chandler shall, except for Chandler Reclaimed Water rescheduled for Delivery in accordance with Subparagraph 5.6.7, receive credit for having Delivered such quantities of Chandler Reclaimed Water as were scheduled for delivery during that period of time;

5.6.3.2 If the Community fails to accept Delivery of Chandler Reclaimed Water in the quantities scheduled pursuant to Subparagraph 5.5 due to the reasons set forth in Subparagraph 5.6.2, the resulting shortage in Delivery shall be resolved by either amending the schedule(s) for Delivery in accordance with Subparagraph 5.6.6 or reconciling in accordance with Subparagraph 5.9.

5.6.3.3 If Chandler fails to Deliver Reclaimed Water in the quantities scheduled pursuant to Subparagraph 5.5 due to the reasons set forth in Subparagraph 5.6.1, the resulting shortage in Deliveries shall be resolved by either amending the schedule(s) for

Delivery in accordance with Subparagraph 5.6.5 or reconciling in accordance with Subparagraph 5.9.

5.6.4 The amount of Chandler Reclaimed Water actually Delivered on a given day of any quarter shall vary by no more than ten percent (10%) from the average daily quantity to be Delivered as set forth in the schedule developed in accordance with Subparagraph 5.5 or amended schedule developed in accordance with Subparagraphs 5.6.5, 5.6.6, or 5.6.7.

5.6.5 In the event that Chandler needs to alter a scheduled Delivery due to the circumstances set forth in Subparagraphs 5.6.1.1 through 5.6.1.4, notice of such need shall be provided as soon as practicable by telephone, if during normal business hours, or by facsimile if not during normal business hours, or by other effective methods to provide actual notice, and shall be followed-up on the next business day in writing. The written notice shall contain an explanation of the need to reduce or discontinue acceptance of Deliveries by the duration and amount specified. Chandler shall then provide the Authorized Representative of the Community with a revised schedule of Delivery pursuant to Subparagraph 5.5.4. The Community and Chandler shall meet in a timely manner to review the proposed schedule and to agree upon any adjustments to be made thereto.

5.6.6 In the event that the Community needs Chandler to alter a scheduled Delivery due to circumstances identified in Subparagraphs 5.6.2.1 through 5.6.2.6, notice of such need shall be provided as soon as practicable by telephone, if during normal business hours, or by facsimile if not during normal business hours, or by other effective methods to provide actual notice, and shall be followed-up on the next business day in

writing. The written notice shall contain an explanation of the need to reduce or discontinue acceptance of Deliveries by the duration and amount specified. Chandler shall then provide the Authorized Representative of the Community with a revised schedule of pursuant to Subparagraph 5.5.4. The Community and Chandler shall meet in a timely manner to review the proposed schedule and to agree upon any adjustments to be made thereto.

5.6.7 If, for any reason, Chandler is unable to Deliver or the Community is unable to accept Delivery of Chandler Reclaimed Water in accordance with the schedule developed pursuant to Subparagraph 5.5, then the Authorized Representative of Chandler or the Community may, upon two weeks notice, require a meeting between their Authorized Representatives, at which time they shall use their best efforts to amend the schedules pursuant to Subparagraph 5.5.4 such that the total quantities of Chandler Reclaimed Water scheduled in the then current Year can be Delivered and accepted.

5.6.8 If, notwithstanding Subparagraphs 5.6.5 through 5.6.7, either Chandler fails to Deliver, or the Community fails to accept Delivery in the annual quantities scheduled pursuant to Subparagraph 5.5 due to any of the reasons set forth in Subparagraphs 5.6.1.1 through 5.6.1.4 or 5.6.2.1 through 5.6.2.6 respectively, the resulting shortages in Deliveries actually made shall be resolved pursuant to the reconciliation provision set forth in Subparagraph 5.9.

5.6.9 If, notwithstanding a Chandler Plant's Non-Attainment status, the Community requests Delivery or otherwise agrees to permit the continued Delivery of Chandler Reclaimed Water from that Chandler Plant, and if that Delivery will not cause Chandler to violate the terms of any permit, law or regulation, or otherwise negates the

indemnification or waiver set forth at Subparagraphs 7.3.4 and 7.3.5, Chandler shall Deliver the Chandler Reclaimed Water and shall be credited with having Delivered Chandler Reclaimed Water in the same manner it would have if the Chandler Plant producing Reclaimed Water for that Delivery had been in Attainment.

5.7 Scheduling Chandler's Diversion of Community CAP Exchange Water.

5.7.1 On or before October 1, in each Year after Chandler initiates Delivery of Chandler Reclaimed Water in accordance with Subparagraph 5.2, and if practicable on or before October 1 of the Year prior to the Year in which all required conditions set forth in Subparagraph 5.10 are expected to become satisfied, the Community shall submit, in writing, to the CAP Operating Agency, the Secretary, and Chandler's Authorized Representative, a notice, identifying:

5.7.1.1 The total and monthly amounts of Community CAP Exchange Water to be delivered to Chandler during the immediately ensuing Year, which amounts shall be the same as those identified in the schedule developed in accordance with Subparagraph 5.5.3.1; and

5.7.1.2 The amounts of Community CAP Exchange Water projected to be ordered by the Community for Delivery to Chandler during the two Years following the immediately ensuing Year, which amounts shall be the same as those in the preliminary schedule for delivery of Community CAP Exchange Water to Chandler developed in accordance with Subparagraph 5.5.3.2.

5.7.2 The Community CAP Exchange Water to be delivered to Chandler pursuant to the provisions of this Exchange Agreement shall be delivered and measured at a CAP Turnout or such other points as may be agreed upon by Chandler and the CAP

Final Execution Version  
October 21, 2005

Operating Agency pursuant to subparagraph 4.5(a) of Chandler's CAP M&I Subcontract.

The Community shall take such actions as are within its power for the CAP Operating Agency to cause the Community CAP Exchange Water to be so delivered to Chandler.

5.7.3 Subject only to the total amount of Community CAP Exchange Water scheduled to be delivered to Chandler in a Year pursuant to Subparagraph 5.7.1.1, Chandler shall order the actual delivery of the Community CAP Exchange Water to which it is entitled under this Exchange Agreement in accordance with Chandler's CAP Delivery Subcontract. Nothing herein shall preclude Chandler from ordering the delivery of Community CAP Exchange Water during any Year in amounts that deviate from the monthly quantities specified in the schedule for delivery of Community CAP Exchange Water to be delivered to Chandler, provided that the total quantity does not exceed the quantity scheduled for delivery to Chandler in accordance with Subparagraph 5.7.1.1.

5.7.4 Except to the extent that this Paragraph 5.0 conflicts with the terms of Chandler's CAP Delivery Subcontract, deliveries, and use, of Community CAP Exchange Water delivered to Chandler by the CAP Operating Agency shall be subject to the Conditions relating to Delivery and Use in Article 4.3 of Chandler's CAP Delivery subcontract. Except as otherwise provided in this Paragraph 5.0, the following subarticles and articles of Chandler's CAP Delivery Subcontract shall apply to Chandler and Chandler's use of Community CAP Exchange Water under this Exchange Agreement: Subarticles 4.5(c), and 4.5(d); Articles 4.9, 4.10, 5.3, 5.4, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13.

5.7.5 Transportation and other loss charges associated with the delivery of Community CAP Exchange Water to Chandler, if any, shall be assessed against

Chandler, and not against the Community, from the CAP Turnout described at Subparagraph 5.7.2 to the point designated by Chandler to receive such Community CAP Exchange Water.

5.7.6 Chandler's failure to order the total amount of Community CAP Exchange Water shall not affect Chandler's obligation to make Chandler Reclaimed Water available for Delivery to the Community or the Community's obligation to accept such Delivery in accordance with the schedule developed pursuant to Subparagraph 5.5.

5.8 Water Exchange Weekly, Monthly and Annual Reports.

5.8.1 Commencing on Wednesday of the first full calendar week after commencement of initial Deliveries pursuant to Subparagraph 5.2, and on Wednesday of each week thereafter, the Authorized Representative of the Community shall report, in writing, to the Authorized Representative of Chandler the amount of Chandler Reclaimed Water Delivered during the prior week. If Chandler disagrees with the quantities reported as having been Delivered pursuant to this Subparagraph 5.8.1, the Authorized Representative of Chandler shall notify the Authorized Representative of the Community by Friday of the week following the week in which the report was received of any disputes with the report submitted by the Community. If such a challenge is made, the Authorized Representatives shall meet within fourteen (14) calendar days after such challenge is made to attempt to informally resolve the dispute. If the dispute is not resolved thereby, the dispute shall be resolved pursuant to Subparagraph 7.2.

5.8.2 No later than the 15th of each month the Authorized Representative of the Community shall report, in writing, to the Authorized Representative of Chandler the quantity of Chandler Reclaimed Water Delivered during the previous month. If Chandler

Final Execution Version  
October 21, 2005

disagrees with the quantities reported as having been Delivered on a monthly basis, the Authorized Representative of Chandler shall have forty-five (45) calendar days from the date that the Community report was received to submit, in writing, a challenge to the same. Challenges to a monthly report shall be limited to (A) unresolved challenges made pursuant to Subparagraph 5.8.1, or (B) any information contained in any monthly report that was not contained in a weekly report for which the challenge period has not yet expired. If such a challenge is made, the Authorized Representatives shall meet within fourteen (14) calendar days after such challenge is made to attempt to informally resolve the dispute. If the dispute is not resolved thereby, the dispute shall be resolved pursuant to Subparagraph 7.2.

5.8.3 No later than February 15th of each Year the Authorized Representative of the Community shall report, in writing, to the Authorized Representative of Chandler the amount of Chandler Reclaimed Water Delivered during the previous Year. If Chandler disagrees with the quantities reported as having been Delivered on an annual basis, the Authorized Representative of Chandler shall have forty-five (45) calendar days from the date that the report was received to submit, in writing, a challenge to the same. Challenges to an annual report shall be limited to (A) unresolved challenges made pursuant to Subparagraph 5.8.2, or (B) any information contained in an annual report that was not contained in a monthly report for which the challenge period has not yet expired. If such a challenge is made, the Authorized Representatives shall meet within fourteen (14) calendar days after such challenge is made to attempt to informally resolve the dispute. If the dispute is not resolved thereby, the dispute shall be resolved pursuant to Subparagraph 7.2.

5.8.4 The Authorized Representative of Chandler shall report, in writing, to the Authorized Representative of the Community any amount of Chandler Reclaimed Water made available for Delivery but not accepted by the Community for reasons other than those set forth in Subparagraph 5.6.2 on the same schedule as the Authorized Representative of the Community reports to Chandler in accordance with Subparagraph 5.8.1, 5.8.2, and 5.8.3. If the Community disagrees with either the quantities reported as having been made available for Delivery or that it believes that the Community's failure to accept such Delivery was excused pursuant to Subparagraphs 5.6.2.1 through 5.6.2.6, the Authorized Representative of the Community shall challenge Chandler's report within the timelines described in Subparagraphs 5.8.1, 5.8.2, and 5.8.3 and be subject to the same dispute resolutions procedures described therein.

5.8.5 Unless otherwise agreed upon in writing by the Authorized Representatives of the Community and Chandler, Chandler shall not be credited for:

5.8.5.1 Having made Chandler Reclaimed Water available for Delivery when the Community was excused from accepting Delivery in accordance with Subparagraphs 5.6.2.1 through 5.6.2.6 and did not accept Delivery; or

5.8.5.2 Having made more than ten percent (10%) over the quantity of Chandler Reclaimed Water available for Delivery than was scheduled for Delivery during the applicable reporting period.

5.8.6 Chandler shall be credited with having made available for Delivery in any Year such quantities of Chandler Reclaimed Water reported by the Authorized Representative of the Community pursuant to Subparagraph 5.8.3 and any amounts reported as having been made available for Delivery in that Year, but not accepted by the

Community, pursuant to Subparagraph 5.8.4, after resolving disputes pursuant to this Subparagraph 5.8.

5.8.7 Nothing in this Subparagraph 5.8 shall affect Chandler's and the Community's respective obligations to use best efforts to reschedule Deliveries in accordance with Subparagraph 5.6.7.

5.9 Accounting and Reconciliation.

5.9.1 If Chandler is credited with making either more or less Chandler Reclaimed Water available for Delivery than was scheduled pursuant to Subparagraph 5.2 and Chandler and/or the Community establishes or has established an account or accounts in accordance with Subparagraph 5.17, Chandler and the Community shall decide whether to debit or credit such account(s) before making any adjustments to future Deliveries in accordance with Subparagraphs 5.9.2. and 5.9.3.

5.9.2 If Chandler is credited with having made available for Delivery during the previous Year no more than five hundred (500) acre-feet less Chandler Reclaimed Water than was scheduled for Delivery after application of any credits available pursuant Subparagraph 5.9.1, Chandler shall, at no charge to the Community, Deliver such additional quantities of Chandler Reclaimed Water on a continuous flow basis, subject to capacity limitations in delivery facilities, as are necessary to make up the difference between the amount of Chandler Reclaimed Water that was Scheduled for Delivery during the preceding Year and the amount of Chandler Reclaimed Water that was Delivered or made available for Delivery during that Year. If such shortage is greater than five hundred (500) acre-feet, Chandler shall Deliver in accordance with an agreed upon schedule, not less than an additional five hundred (500) AFY of Chandler

Contributed Reclaimed Water at no charge to the Community until the shortage is made up, except that Chandler shall not be required to deliver more Reclaimed Water than is necessary to make up the shortage.

5.9.3 If the amount of Chandler Exchange Reclaimed Water that Chandler is credited with having made available for Delivery during the previous Year is greater than the amount to which the Community was entitled under the terms of this Paragraph 5.0, after application of any credits available pursuant Subparagraph 5.9.1, Chandler may reduce, on a continuous flow basis, the amount of Chandler Contributed Reclaimed Water available for Delivery to the Community during the following year by an amount equal to the amount of excess Chandler Exchange Reclaimed Water Delivered during the previous Year.

5.9.4 The quantity of Community CAP Exchange Water scheduled to be delivered to Chandler pursuant to Subparagraph 5.5.2 shall be calculated prior to making the adjustments in the quantities of Chandler Reclaimed Water to be made available for Delivery pursuant to Subparagraphs 5.9.1, 5.9.2, and 5.9.3.

5.10 Conditions Required Prior to Initiation of Delivery.

5.10.1 Delivery shall not commence under this Paragraph 5.0 until the occurrence of the Enforceability Date and completion of all of the events described at Subparagraphs 5.10.1.1 through 5.10.1.4.

5.10.1.1 Chandler and the Community have made or caused to be made the infrastructure improvements that are needed to implement Chandler's Delivery obligations under this Exchange Agreement.

5.10.1.1.1 The infrastructure improvements required of Chandler are (1) Chandler's upgrading its Plant(s) from which Chandler Reclaimed Water will be made available for Delivery as necessary to meet the A+ Reclaimed Water Quality Standards set forth in Subparagraph 4.1, and (2) Chandler's either paying for the construction of the Chandler Pipeline pursuant to Construction Agreement, or an alternative conveyance system pursuant to Subparagraph 5.18.2. The infrastructure improvements required of the Community include (1) the Community's installation, at its expense, of the measuring device described in Subparagraph 5.15.1, (2) construction of the Chandler Pipeline as required by the Construction Agreement, and (3) the construction of such facilities as are required for blending required by Subparagraph 5.12.

5.10.1.1.2 If the Chandler Pipeline is constructed in accordance with the Construction Agreement, all improvements referenced in Subparagraph 5.10.1 shall be made within six (6) months after the Enforceability Date.

5.10.1.1.3 If the Chandler Pipeline is not constructed in accordance with the Construction Agreement all improvements referenced in Subparagraph 5.10.1 shall be made within five (5) years after the Enforceability Date.

5.10.1.2 Chandler's CAP Delivery Subcontract and Subcontract Among the United States, Central Arizona Water Conservation District and the City of Chandler Providing for Water Services, dated December 21, 1993 have been amended as provided in Exhibit 29.15.A and 29.15.B1 to the Settlement Agreement.

5.10.1.3 Satisfaction of such environmental requirements that are applicable to the implementation of this Exchange Agreement.

5.10.1.4 Funds shall have been made available for the Secretary to pay, in accordance with section 205(a)(6) of the Act, CAP Fixed OM&R Charges for Delivery of Community CAP Water.

5.11 Delivery of Community CAP Exchange Water During Times of Shortage.

5.11.1 If there is no shortage of CAP water as defined in Subparagraph 8.16.1 of the Settlement Agreement such that the quantity of Community CAP Indian Priority Water is reduced, the Community shall not reduce the amount of Community CAP Exchange Water available to Chandler pursuant to this Paragraph 5.0.

5.11.2 If the CAP Operating Agency reduces deliveries of CAP Indian Priority Water to the Community as a result of a time of shortage of CAP Water as defined at Subparagraph 8.16.1 of the Settlement Agreement, the Authorized Representative of the Community shall, within thirty (30) calendar days after receipt of written notice of the same from the Secretary or the CAP Operating Agency, provide written notice to the Authorized Representative of Chandler whether or not the Community intends to reduce the amount of Community CAP Exchange Water available to Chandler pursuant to this Paragraph 5.0 and, if so, the percentage amount of such reduction. The quantity of Community CAP Exchange Water made available to Chandler shall be reduced by not more than the same percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with Subparagraph 8.16.2 of the Settlement Agreement. Unless the Authorized Representative of Chandler agrees otherwise in writing, the Community shall not voluntarily reduce its allotment of Community CAP Water during a time of shortage if such voluntary reduction will reduce

the amount of CAP Exchange Water that would otherwise be available to Chandler for that Year.]

5.11.3 If the Community reduces the amount of Community CAP Exchange Water available to Chandler in accordance with this Subparagraph 5.11, Chandler shall, unless otherwise agreed upon by the Community in writing, reduce the amount of Chandler Exchange Reclaimed Water to be made available for Delivery to the extent necessary to maintain the ratio of eight-tenths (0.8) acre-foot of Community CAP Exchange Water to be exchanged for each one (1) acre-foot of Chandler Reclaimed Water prior to applying the reconciliation provisions of Subparagraph 5.9.

5.12 Blending Water.

5.12.1 It is the Community's responsibility to provide sufficient water, from any source of Water described in Subparagraph 4.1 of the Settlement Agreement, other than Reclaimed Water, to blend with Chandler Exchange Reclaimed Water such that the Chandler Exchange Reclaimed Water comprises no more than fifty percent (50%) of the total water in the Community's Water Delivery System at the confluence of the Chandler Pipeline and the Community's Water Delivery System or at such other location as may be agreed upon by the Authorized Representatives of the Community and Chandler pursuant to Subparagraph 5.18.

5.12.2 If the Community fails to order or provide sufficient blending water from any source of Water described in Subparagraph 4.1 of the Settlement Agreement, other than Reclaimed Water, necessary to achieve the fifty percent (50%) blend set forth in Subparagraph 5.12.1, and such water is available for such blending purposes, Chandler shall not be required to curtail or stop Delivering Chandler Exchange Reclaimed Water

and Chandler shall continue to be credited for having made Chandler Exchange Reclaimed Water available for Delivery. This Subparagraph 5.12.2 shall not affect Chandler's and the Community's respective obligation to use best efforts to reschedule Deliveries in accordance with Subparagraph 5.6.7.

5.12.3 Delivery of Chandler Contributed Reclaimed Water is not subject to any blending requirement. Nothing in this Subparagraph 5.12, however, prohibits the Community from blending other water with Chandler Contributed Reclaimed Water provided that such blending will not result in the Community's failure to provide water to blend with Chandler Exchange Reclaimed Water.

5.12.4 Unless otherwise agreed to in writing by the Authorized Representatives of the Community and Chandler, if sufficient water from any source of water described in the Settlement Water Budget other than Reclaimed Water is not available for blending with Chandler Exchange Reclaimed Water and such lack of availability was due solely to factors outside of the control of the Community or due to a change in Chandler's annual Delivery schedule, Chandler shall cease further Deliveries within thirty (30) calendar days of its receipt of notice of a lack of availability of water for blending. If Chandler is required to cease further Delivery pursuant to this Subparagraph 5.12.4, and the Community later notifies Chandler that adequate quantities of water are available for blending purposes, Chandler may, but shall not be required to, Deliver additional quantities of Chandler Exchange Reclaimed Water such that the amount of Chandler Exchange Reclaimed Water it would have Delivered, but for a shortage of water available for blending, is ultimately delivered to the Community during that Year. The Community shall not be required to accept increased Deliveries to make up for a

reduction in the quantity of Reclaimed Water Delivered due to a lack of water for blending, but shall use all reasonable efforts to do so subject to water delivery system capacity and receipt of at least twenty-four (24) hours prior notice.

5.13 Community Dry-ups and other Community and Chandler OM&R Activities.

5.13.1 In the event that notice of specific dates of dry-up can not be provided at the meetings required by Subparagraphs 5.4.1 and 5.5.1, the Community shall provide estimated dates for scheduled dry-ups for the ensuing Year and shall give notice of the specific dates of such scheduled dry-ups at least forty-five (45) calendar days prior to initiating the same. Such scheduled dry-ups shall not last more than thirty (30) calendar days. The Community and Chandler shall use their best efforts to coordinate any scheduled dry-ups or other OM&R activities of their respective systems or any portion thereof to meet the Delivery and acceptance requirements of this Exchange Agreement, and if necessary seek to reschedule Deliveries in accordance with 5.6.5, 5.6.6, and 5.6.7.

5.14 Transportation Losses of Chandler Reclaimed Water.

5.14.1 Chandler shall be responsible for transportation losses of Chandler Reclaimed Water occurring before such water reaches the Chandler Point of Delivery. The Community shall be responsible for transportation losses of Chandler Reclaimed Water occurring after such water passes the Chandler Point of Delivery.

5.15 Measuring Devices.

5.15.1 The Community shall install, calibrate, and maintain, at its expense, a measuring device at the Chandler Point of Delivery to measure the quantity of Reclaimed Water Delivered.

5.15.2 Chandler may install flow meter(s) at the Plant(s) to measure Reclaimed Water conveyed to the Chandler Point of Delivery.

5.15.3 The measuring devices required by Subparagraph 5.15.1 shall be of a type which is acceptable to Chandler and the Community and which is a measurement device whose accuracy is commensurate with industry standards for measuring devices used for similar purposes.

5.15.4 There shall be a rebuttable presumption that the flow measurement meter maintained by the Community pursuant to this Subparagraph 5.15 is accurate and such presumption shall be overcome only by clear and convincing evidence to the contrary.

5.15.5 In addition to the information provided in the monthly report required pursuant to Subparagraph 5.8.2, the Community shall provide Chandler a report reflecting meter maintenance, calibration, repair, and replacement occurring during the month for which the above referenced monthly report is submitted.

5.15.6 At least annually for three (3) years after the installation of the device required pursuant to this Subparagraph 5.15, the Community shall provide a registered professional engineer to inspect, and, if necessary, correct the accuracy of the measuring and recording devices required by this Subparagraph 5.15 and the procedures used by the Community for measurement of water. After the third anniversary of the installation of the devices, inspections shall occur at least every three (3) years. Within thirty (30) calendar days of such inspections the Community shall provide to Chandler a certified copy of the report by the registered professional engineer that sets forth the findings of the inspection and a verification that the measuring and recording devices and procedures satisfy industry standards. At any time, Chandler may require, upon seven (7) calendar

days notice, an inspection by a registered professional engineer of the measuring devices required by this Subparagraph 5.15. If the results of the inspection show that the device's measurement accuracy is within industry standards, then Chandler shall pay all costs incurred for the inspection. Otherwise, the Community shall bear such costs. In case of discrepancies, Chandler and the Community shall confer to attempt to resolve such discrepancies as may exist or arise.

5.16 Emergencies and Force Majeure Event.

5.16.1 When Chandler or the Community is unable to Deliver, or to accept Delivery of, Chandler Reclaimed Water due to Emergency or Force Majeure Event, the Community's and Chandler's obligations under this Exchange Agreement shall be suspended during the period of such emergency or Force Majeure Event. After the period has ended, Chandler and the Community shall use their best efforts to amend the schedule developed pursuant to Subparagraph 5.5 such that the total quantities of Chandler Reclaimed Water scheduled in the then current Year can be Delivered and accepted.

5.17 Chandler and Community Advance Credits.

5.17.1 The Authorized Representatives of Chandler and the Community may agree to establish a schedule and a mechanism to allow Chandler to make "advance Deliveries" of Chandler Exchange Reclaimed Water such that Chandler is able to establish and maintain a credit balance of not more than one thousand two hundred (1,200) acre-feet at any time. The Authorized Representatives of the Community and Chandler may agree to establish a schedule and a mechanism to allow the Community to make "advance deliveries" of Community CAP Exchange Water such that the

Community is able to establish and maintain a credit balance of not more than one thousand (1,000) acre-feet at any time. The limitations described herein may be amended upon mutual agreement of the Authorized Representatives of the Community and Chandler.

5.18. Chandler Point of Delivery.

5.18.1 Unless mutually agreed to in writing by the Authorized Representatives of the Community and Chandler, Chandler Reclaimed Water shall be Delivered at the Chandler Point of Delivery.

5.18.2 In the event that the Chandler Pipeline is not constructed, then the Authorized Representatives of the Community and Chandler shall agree upon an alternative method to Deliver Chandler Reclaimed Water to achieve the purposes of this Exchange Agreement. If the Authorized Representatives of the Community and Chandler cannot agree upon an acceptable alternative within one (1) year after the Enforceability Date, then the dispute resolution provisions of Subparagraph 7.2 shall apply.

5.19 Payment for Delivery and Transportation of Community CAP Exchange Water.

5.19.1 Chandler shall pay only the charges for the delivery of Community CAP Water as provided herein and shall not pay any other charges or payments for Community CAP Water.

5.19.2 Chandler shall be responsible for providing interconnection capacity to permit Delivery of Community CAP Exchange Water to Chandler and shall pay any transportation charges, including those imposed pursuant to the "Water Transportation Agreement Between the Salt River Valley Water User's Association and the City of

Final Execution Version  
October 21, 2005

Chandler” dated September 10, 1991, as amended, for the Delivery of Community CAP Exchange Water to Chandler from the point at which the Community CAP Exchange Water is diverted from the CAP System.

5.19.3 Whenever funds are available from the Lower Colorado River Basin Development Fund in accordance with section 205(a)(6) of the Act, in such other fund as Congress may authorize, or through annual appropriations, to be used by the United States to pay CAP Fixed OM&R Charges for Delivery of Community CAP Water, the United States shall pay the CAP Operating Agency the CAP Fixed OM&R Charges associated with Delivery of Community CAP Exchange Water to Chandler in advance of Delivery as if the Community CAP Exchange Water had been delivered to the Community. Such payments shall be in accordance with Paragraph 4 (f) of the CAP Repayment Stipulation. If funds are so available to be used by the United States to pay CAP Fixed OM&R Charges for Delivery of Community CAP Water and the United States fails to pay the CAP Fixed OM&R Charges associated with the Delivery of Community CAP Exchange Water to Chandler in advance of Delivery, Chandler may, at its option, either discontinue Delivery of Chandler Exchange Reclaimed Water to the Community or pay such CAP Fixed OM&R Charges itself and shall retain the right to seek recovery under any cause of action which it may have against the United States. If, for a period of three (3) years, Chandler chooses to not Deliver as provided in this Subparagraph 5.19.3, the Community may, at its option, terminate this agreement as to Chandler and all relative obligations hereunder.

5.19.4 If the United States does not have funds available to pay CAP Fixed OM&R Charges for Delivery of CAP Community Water as described in Subparagraph

Final Execution Version  
October 21, 2005

5.19.3, herein, Chandler shall pay the CAP Operating Agency the CAP Fixed OM&R Charges associated with Delivery of Community CAP Exchange Water to Chandler in advance of Delivery.

5.19.5 Chandler shall pay the CAP Operating Agency the CAP Pumping Energy Charges associated with the delivery of Community CAP Exchange Water to Chandler in advance of such delivery.

5.19.6 In accordance with Subparagraph 8.20 of the Settlement Agreement, no CAP water service capital charges shall be due or payable for Community CAP Water delivered pursuant to this Exchange Agreement, and Chandler shall not be obligated to pay any CAP water service capital charges, or any other capital charges associated with the Community CAP Exchange Water delivered to Chandler pursuant to this Exchange Agreement.

5.19.7 In no event shall the Community be liable for any payment of any kind, in any capacity, to or on behalf of Chandler in regard to any Community CAP Exchange Water delivered to, on behalf of, or by Chandler.

5.20 Duty to Repair Water Delivery System.

5.20.1 If a Chandler Plant, off-Reservation pipeline or other off-Reservation facility located within Chandler is damaged, fails, or is blocked in such a manner that it impairs or prevents Chandler from meeting its responsibilities under this Exchange Agreement, Chandler shall take prompt action to repair such damage, failure or blockage including, as needed, the installation of temporary structures. Permanent repairs designed to prevent future failures or blockages shall be made as soon as practicable to replace any

temporary repairs. Except for damages caused by the Community, all such repairs and/or replacement costs shall be borne by Chandler.

5.20.2 If any on-Reservation pipeline, including the Chandler Pipeline or other on-Reservation facility is damaged, fails, or is blocked in such a manner that it impairs or prevents the Community from meeting its responsibilities under this Exchange Agreement, the Community shall take prompt action to repair such damage, failure or blockage including, as needed, the installation of temporary structures in order to allow the Deliveries contemplated by this Exchange Agreement to resume. Permanent repairs designed to prevent future failures or blockages shall be made as soon as practicable to replace any temporary repairs. Except for damages caused by Chandler, all such repair and/or replacement costs shall be borne by the Community.

5.21 Amendment of Exchange Agreement as between Chandler and the Community.

5.21.1 The provisions of this Exchange Agreement relating to Chandler and the Community may be amended by written agreement between Chandler and the Community without court approval or the need for consent or approval of any other Party to this Exchange Agreement or parties to the Settlement Agreement unless such approval is required by law; provided, however, that no such amendment may violate any provisions of the Act or Settlement Agreement, or adversely affect the rights under the Settlement Agreement of any party to the Settlement Agreement or adversely affect the rights under this Exchange Agreement of any Party hereto who is not a signatory to such amendment.

**6.0 Exchange of Mesa Reclaimed Water for Community CAP Exchange Water**

6.1 Exchange of Water and Term of Agreement.

6.1.1 Mesa and the Community shall exchange Mesa Reclaimed Water and Community CAP Exchange Water at the ratio of one (1) acre-foot of Mesa Reclaimed Water for each eight-tenths (0.8) acre-foot of Community CAP Exchange Water in accordance with this Exchange Agreement. Subject to the terms of this Exchange Agreement, (1) Mesa shall make up to twenty-nine thousand four hundred (29,400) AFY of Mesa Reclaimed Water available for Delivery and the Community shall accept such Deliveries of up to twenty-nine thousand four hundred (29,400) AFY of Mesa Reclaimed Water, and (2) the Community shall, in accordance with Subparagraph 6.7, schedule for delivery to Mesa up to twenty-three thousand five hundred thirty (23,530) AFY of Community CAP Exchange Water. Except as otherwise provided in Subparagraph 4.3, at no time shall Mesa Deliver Reclaimed Water from a Plant that is not in Attainment.

6.1.2 The exchange between Mesa and the Community shall begin after all preconditions described in Subparagraph 6.11 have been met and in accordance with Subparagraphs 6.2 and 6.3. It shall continue thereafter for so long as (1) the Community's CAP Water Delivery Contract, and any extension or amendment thereof, is in effect and the Community is eligible to receive sufficient quantities of Community CAP Exchange Water to satisfy its obligations under this Exchange Agreement and (2) the terms and conditions of the Settlement Agreement remain in effect as among the United States, the Community, and Mesa.

6.1.3 Provisions of the Mesa Delivery Agreement shall apply to the extent that outstanding unfulfilled obligations remain in regard to: (1) The Community's obligation to make CAP water available in exchange for any deliveries of reclaimed water made or scheduled to be made pursuant to that agreement; (2) Mesa's obligation to make Mesa

reclaimed water available for delivery in exchange for any CAP water delivered or scheduled for delivery to Mesa pursuant to that agreement; (3) The adjustments in deliveries that would otherwise be required in accordance with Subparagraph 4.10 of the Mesa Delivery Agreement, and (4) The indemnification and waiver provisions pursuant to Subparagraph 4.23 of the Mesa Delivery Agreement relating to activities undertaken by Mesa or the Community during the term of the Mesa Delivery Agreement.

6.1.4 Mesa and the Community shall maintain in good working order the infrastructure necessary for each to meet their obligations under this Exchange Agreement.

6.2 Scheduling Initial Water Exchange.

6.2.1 If exchange of water was initiated under the Mesa Delivery Agreement prior to the time that all preconditions listed in Subparagraph 6.11 were met, then the initial exchange of water between Mesa and the Community under this Exchange Agreement shall commence pursuant to Subparagraphs 6.2.1.1 and 6.2.1.2.

6.2.1.1 If all preconditions listed in Subparagraph 6.11 were met before August 1 of any Year, then Mesa and the Community shall, using the schedule developed under the Mesa Delivery Agreement, exchange Mesa Reclaimed Water and Community CAP Exchange Water for the balance of the then current Year. In this case such Year shall constitute the Year of the initial water exchange under this Exchange Agreement.

6.2.1.2 If all preconditions listed in Subparagraph 6.11 were met after August 1 of any Year, then Mesa and the Community shall, using the schedule developed under the Mesa Delivery Agreement for the then current Year and the following Year, exchange Mesa Reclaimed Water and Community CAP Exchange Water. In this case, the Year

after the Year in which all preconditions listed in Subparagraph 6.11 were met shall constitute the Year of the initial water exchange under this Exchange Agreement.

6.2.1.3 If exchange of water was not initiated in accordance with the Mesa Delivery Agreement prior to the time that all preconditions listed in Subparagraph 6.11 were met, then the Authorized Representative of Mesa shall, not more than thirty (30) days after all such preconditions have been met, notify the Authorized Representative of the Community of the date that Mesa will be capable of making Mesa Reclaimed Water available for Delivery. Not later than fifteen (15) days after Mesa provides such notice, the Authorized Representatives of the Community and Mesa shall meet to schedule the initial water Deliveries. Mesa and the Community shall make their best efforts to schedule water exchanges during the then current Year and the following Year to the extent Community CAP Exchange Water can be scheduled for delivery. In this case, the first Year in which Mesa Delivers shall constitute the Year of the initial water exchange. Unless the Authorized Representatives of the Community and Mesa agree, such initial Deliveries shall not exceed " $x/12 \times 7,000$ " acre-feet of Mesa Reclaimed Water, where " $x$ " is the number of full months remaining in the Year after initial Deliveries begin.

6.2.1.4 Mesa shall provide the notice required by Subparagraph 6.2.1.3 at least thirty (30) days prior to the date that Mesa intends to first Deliver.

6.2.2 After all preconditions listed in Subparagraph 6.11 have been met, no provisions of the Mesa Delivery Agreement shall remain in effect and all provisions of this Exchange Agreement shall apply except as provided in Subparagraph 6.1.3.

6.3 Mesa Reclaimed Water to be Made Available for Delivery and Community CAP Exchange Water to be made available in all Years After Initial Water Exchange.

6.3.1 Subject to Subparagraph 6.8.1, if the Community and Mesa exchanged water under the Mesa Delivery Agreement, Mesa shall, in the Year following the Year in which the initial water Deliveries are made pursuant to Subparagraph 6.2.1, make available for Delivery, at flow rates between ten (10) and fifteen (15) cfs taking into account Diurnal Flow, either seven thousand (7,000) acre-feet or the quantity of Reclaimed Water scheduled for delivery in the Year of the initial water exchange, whichever is greater, at the measuring device described at Subparagraph 6.16.1.

6.3.2 Subject to Subparagraph 6.8.1, if the Community and Mesa did not exchange water under the Mesa Delivery Agreement, Mesa shall, in the Year following the Year in which initial water Deliveries are made pursuant to Subparagraph 6.2.1.3, make seven thousand (7,000) acre-feet of Mesa Reclaimed Water available for Delivery at flow rates between ten (10) and fifteen (15) cfs, taking into account Diurnal Flow, at the measuring device described at Subparagraph 6.16.1.

6.3.3 Subject to the provisions of Subparagraphs 6.3.3.1, 6.8.1 and 6.10, Mesa shall, in each Year after the Year in which the initial Delivery occurs, increase the quantity of Mesa Reclaimed Water to be made available for Delivery such that an additional one thousand (1,000) to one thousand five hundred (1,500) AFY is made available for Delivery and so scheduled in accordance with Subparagraph 6.5.1.1 at a continuous flow rate until twenty-nine thousand four hundred (29,400) AFY is made available for Delivery. This period shall be known as the "Mesa ramp up period" and shall last no longer than twenty-three (23) Years.

6.3.3.1 During the Mesa ramp up period, Mesa shall not be required to increase the quantity of Mesa Reclaimed Water that it makes available for Delivery by the amount required by Subparagraph 6.3.3, if:

6.3.3.1.1 The Community reduces the quantity of Community CAP Exchange Water available to Mesa pursuant to Subparagraph 6.12, but only to the extent that such reduction would result in the Community's not making eight-tenths (0.8) acre-foot of Community CAP Exchange Water available to Mesa for each additional one (1) acre-foot of Mesa Reclaimed Water made available for Delivery in accordance with Subparagraph 6.5.1.1; or

6.3.3.1.2 The average increase in flow of Mesa Reclaimed Water made available for Delivery for all years after the initial Delivery is greater than one thousand (1,000) acre-feet and the quantity of Mesa Reclaimed Water made available for Delivery in accordance with Subparagraph 6.5.1.1 in that Year is not less than the quantity made available for Delivery in the immediately preceding Year, but only to the extent that such reduced increase would not result in the average increase of water made available for Delivery for all Years after the initial Delivery falling below one thousand (1,000) acre-feet; or

6.3.3.1.3 Insufficient Effluent is produced within Mesa for Mesa to meet such increased Delivery obligations, but only to the extent that such insufficiency prevents Mesa from increasing its Deliveries pursuant to Subparagraph 6.3.3; or

6.3.3.1.4 The Community is unable to schedule sufficient water to meet the blending requirements of Subparagraph 6.13.

6.3.3.2 If agreed to in writing in any Year by the Authorized Representatives of the Community and Mesa, Mesa may schedule more or less Mesa Reclaimed Water than would otherwise be required by Subparagraph 6.3.3.

6.3.4 After the Mesa ramp up period, subject to the provisions of Subparagraphs 6.3.4.1, 6.8.1, and 6.10, Mesa shall make twenty-nine thousand four hundred (29,400) AFY of Mesa Reclaimed Water available for Delivery in accordance with Subparagraph 6.5.1.1.

6.3.4.1 Mesa may make less Mesa Reclaimed Water available for Delivery than is required by Subparagraph 6.3.4, if:

6.3.4.1.1 The Community reduces the quantity of Community CAP Exchange Water available to Mesa pursuant to Subparagraph 6.12, but only to the extent that such reduction would result in the Community's not making eight-tenths (0.8) acre-foot of Community CAP Exchange Water available to Mesa for each one (1) acre-foot of Mesa Reclaimed Water made available for Delivery in accordance with Subparagraph 6.5.1.1; or

6.3.4.1.2 Insufficient Effluent is produced within Mesa for Mesa to meet such Delivery obligation, but only to the extent that such insufficiency prevents Mesa from making available for Delivery the quantity that would otherwise be required by Subparagraph 6.3.4; or

6.3.4.1.3 The Community is unable to schedule sufficient water to meet the blending requirements of Subparagraph 6.13

6.3.4.1.4 The Authorized Representatives of the Community and Mesa agree in writing to schedule less Mesa Reclaimed Water for Delivery than would otherwise be required by Subparagraph 6.3.4.

6.4 Scheduling Water Exchanges in all Years After Initial Water Exchange.

6.4.1 Beginning in the Year following the Year in which the initial water exchange occurs in accordance with Subparagraph 6.2, the Authorized Representatives of the Community and Mesa shall meet no later than September 1 of each Year. At that meeting:

6.4.1.1 The Authorized Representatives of the Community and Mesa shall review the status of Mesa Reclaimed Water Delivered and the status of Community CAP Exchange Water delivered to Mesa under this Agreement. To the extent possible and necessary, the Authorized Representatives shall use their best efforts to amend the schedules in accordance with Subparagraph 6.5.2, such that the total quantities of Mesa Reclaimed Water that Mesa and the Community are obligated to Deliver and accept during the then current Year can be Delivered and accepted.

6.4.1.2 The Community and Mesa shall advise each other of their planned OM&R activities for the balance of the current Year and for the following Year that may limit their ability to perform under this Agreement;

6.4.1.3 The Community shall advise Mesa if, and to what extent, the Community will limit the quantity of Community CAP Exchange Water to be made available to Mesa in accordance with Subparagraph 6.12 and whether the Community anticipates that it will be unable to schedule sufficient quantities of blending water to satisfy the requirements of Subparagraph 6.13;

6.4.1.4 Mesa shall provide the Community with a written estimate of the amount of Mesa Reclaimed Water that will be made available for Delivery on a monthly basis, including estimated monthly production from each Mesa Plant during the upcoming Year, which amount shall be consistent with the amounts described at Subparagraph 6.3.

6.4.1.5 Mesa shall provide the Community with a forecast of Mesa Reclaimed Water to be made available for Delivery for the succeeding two Years; and

6.4.1.6 The Authorized Representatives of the Community and Mesa shall develop, for the upcoming Year, a written schedule for Deliveries, for Community CAP Water to be made available to Mesa, and for OM&R activities as provided in Subparagraph 6.5.

6.5 Written Schedule for Deliveries, Community CAP Exchange Water, and OM&R Activities.

6.5.1 The written schedule for Deliveries and for Community CAP Exchange Water for the upcoming Year shall be in such form as is agreed upon by the Authorized Representatives of the Community and Mesa, and shall include the amounts of:

6.5.1.1 Mesa Reclaimed Water to be made available for Delivery on a monthly basis, with the quantities and timing for Delivery being consistent with the quantities and timing described in Subparagraph 6.3;

6.5.1.2 Community CAP Exchange Water to be scheduled for delivery to Mesa in accordance with Subparagraph 6.7. The quantity of Community CAP Exchange Water scheduled to be delivered to Mesa shall be determined without regard to the adjustments in the quantities of Mesa Reclaimed Water to be made available for Delivery pursuant to Subparagraph 6.10.1.

6.5.1.3 Water anticipated to be necessary to meet the adjustment provisions of Subparagraph 6.10.

6.5.2 Mesa and the Community may amend the schedules developed pursuant to Subparagraph 6.5.1 such that the total quantities of Mesa Reclaimed Water scheduled to be made available for Delivery pursuant to Subparagraph 6.5.1.1 can be Delivered and accepted in the then current Year.

6.5.3 The written schedule for OM&R activities for the upcoming Year shall be in such form as is agreed upon by the Authorized Representatives of the Community and Mesa, and shall specify the estimated dates of OM&R activities.

6.6 Delivery and Acceptance of Mesa Reclaimed Water.

6.6.1 Mesa is required to make Mesa Reclaimed Water available for Delivery in accordance with the schedules developed pursuant to Subparagraph 6.5 from any Mesa Plant that is in Attainment, or from any Mesa Plant from which the Community elects to accept Delivery of Mesa Reclaimed Water in accordance with Subparagraph 4.3.2.1.1 except when Delivery is precluded (1) during Force Majeure Events as described in Subparagraph 6.17 that prevent the Community or Mesa from complying with the schedule developed in accordance with Subparagraph 6.5, or (2) when the Community is excused from accepting Delivery pursuant to Subparagraph 6.6.2 and does not accept Delivery, or (3) when, but only to the extent that, insufficient Effluent is produced within Mesa for Mesa to meet such Delivery obligations;

6.6.2 The Community is required to accept Delivery of Mesa Reclaimed Water made available for Delivery in accordance with the schedule developed pursuant to Subparagraph 6.5 from any Mesa Plant in Attainment in accordance with the terms and

conditions of this Exchange Agreement, except (1) during Force Majeure Events as described in Subparagraph 6.17, that prevent the Community or Mesa from complying with the schedule developed in accordance with Subparagraph 6.5, (2) when Mesa is not in compliance with all applicable permits or laws in regard to treatment of waste water to be made available for Delivery, (3) when sufficient quantities of water are not available for blending purposes to satisfy the requirements of Subparagraph 6.13; and (4) during OM&R activities scheduled in accordance with Subparagraph 6.14.1 and 6.5.3.

6.6.3 If the Community does not accept Delivery of Mesa Reclaimed Water for reasons other than as described in Subparagraph 6.6.2, Mesa shall receive credit for having made available for Delivery such quantities of Mesa Reclaimed Water as were scheduled for Delivery during that period of time. However, to the extent that Mesa has other Reclaimed Water available for Delivery, after meeting pre-existing obligations for delivery or use of such water, and has adequate existing capacity in the Mesa Pipeline, Mesa and the Community shall use their best efforts to amend the schedules in accordance with Subparagraph 6.5.2, such that Mesa Delivers the total quantities of Mesa Reclaimed Water scheduled for Delivery in the then current Year but Mesa shall not receive additional credit for the Delivery of such water.

6.6.4 Mesa and the Community recognize that the Delivery of Mesa Reclaimed Water will not always be accomplished precisely in accordance with the quantities scheduled for monthly Delivery pursuant to Subparagraph 6.5, and have therefore provided flexibility in such Delivery of other water at Subparagraph 6.8.

6.6.5 If Mesa or the Community is unable, or fails, to meet its obligations to Deliver or accept Delivery of Mesa Reclaimed Water in accordance with the schedule

developed pursuant to Subparagraph 6.5, then the Authorized Representative of Mesa or the Community may require a meeting between the Authorized Representatives at a mutually agreed upon time. In no event shall the meeting occur later than thirty (30) days after notice of the required meeting is first given. At that meeting, the Authorized Representatives shall use their best efforts to amend the schedules in accordance with Subparagraph 6.5.2, such that the total quantities of Mesa Reclaimed Water that Mesa and the Community are obligated to Deliver and accept during the then current Year can be Delivered and accepted.

6.7 Mesa's Diversion of Community CAP Exchange Water.

6.7.1 Beginning in the first Year that the written schedule for deliveries is developed in accordance with Subparagraph 6.5, the Community shall include in its written schedule to be submitted to the Secretary on or before October 1 of each Year, in accordance with Community's CAP Water Delivery Contract, the amount of Community CAP Exchange Water that the Community desires to be delivered to Mesa on a monthly basis during the following Year, which amount shall be the amount scheduled in accordance with Subparagraph 6.5.1.2, along with the amount of Community CAP Exchange Water projected to be scheduled by the Community for delivery to Mesa during the succeeding two Years.

6.7.2 For scheduling purposes, the Secretary shall treat that quantity of Community CAP Exchange Water that is included in the written schedule for delivery to Mesa in the same manner as he or she treats Community CAP Indian Priority Water scheduled for delivery to the Community.

6.7.3 The Secretary or the Operating Agency shall deliver Community CAP Exchange Water to Mesa as further provided herein; however, neither the Secretary nor the Operating Agency shall be obligated to make such deliveries if, in the judgment of the Secretary nor the Operating Agency, delivery or schedule of deliveries to Mesa would limit deliveries of CAP water to any CAP Contractor, including the Community, or CAP Subcontractor to a degree greater than would direct deliveries to the Community. The Secretary or the Operating Agency shall deliver the Community CAP Exchange Water to Mesa in accordance with water delivery schedules provided by the Community to the Secretary. The Operating Agency shall inform the Community of the amount of Community CAP Exchange Water delivered to Mesa in the previous year. The water ordering procedures contained in Article 4.4 of Mesa's CAP M&I Water Service Subcontract (or in a corresponding provision of any replacement subcontract) shall apply to Mesa's ordering of Community CAP Exchange Water under this Exchange Agreement. In no event shall the Secretary or the Operating Agency be required to deliver to Mesa under this Exchange Agreement in any one month a total amount of Community CAP Exchange Water greater than eleven percent (11%) of Mesa's annual maximum entitlement under this Exchange Agreement; provided, however, that the Secretary 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 all CAP Contractors and CAP Subcontractors, as determined by the Secretary and the Operating Agency if Mesa agrees to accept such increased deliveries.

6.7.4 Mesa may use or deliver Community CAP Exchange Water for use outside the boundaries of the City of Mesa, but may not use, lease, transfer the use of, or

otherwise cause the Community CAP Exchange Water to be delivered for use outside of the boundaries of the CAP service area.

6.7.5 Mesa shall have the right to use Community CAP Exchange Water for any purpose that is consistent with Arizona law and not expressly prohibited by this Exchange Agreement, including groundwater recharge as that term is defined in Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, as amended on December 1, 1988, hereinafter referred to as the "Repayment Contract." Except to the extent that this Exchange Agreement conflicts with the terms of Mesa's M&I Water Service Subcontract, deliveries of Community CAP Exchange Water to Mesa and its use by Mesa shall be subject to the Conditions Relating to Delivery and Use in Article 4.3 of Mesa's CAP M&I Water Service Subcontract. During the term of this Exchange Agreement, the following subarticles or articles of Mesa's CAP M&I Water Service Subcontract shall apply to Mesa and to Mesa's use of water under this Exchange Agreement: Subarticles 4.5(c), 4.5(d), and 5.2(f); Articles 4.9, 4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13.

6.7.6 Neither the Secretary, nor the Community warrant the quality of CAP water that they deliver or make available for delivery and neither is under any obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

6.7.7 The Community CAP Exchange Water to be delivered to Mesa pursuant to the provisions of this Exchange Agreement shall be delivered and measured at CAP Turnouts or such other points as may be agreed upon by Mesa and the Operating Agency pursuant to subparagraph 4.5(a) of Mesa's CAP M&I Subcontract.

6.8 Accounting.

6.8.1 Subject to the provisions of Subparagraphs 6.8.1.1 and 6.8.1.2, Mesa shall receive credit for all Mesa Reclaimed Water that Mesa makes available for Delivery in accordance with Subparagraph 6.6.1 and which the Community either accepts or is required to accept in accordance with Subparagraph 6.6.2.

6.8.1.1 Unless otherwise agreed to in writing by the Authorized Representative of the Community, Mesa shall not be credited for having made available for Delivery in any calendar month more than ten percent (10%) over the amount of Mesa Reclaimed Water that Mesa was obligated to make available for Delivery in that calendar month in accordance with Subparagraph 6.6.1;

6.8.1.2 Unless otherwise agreed to in writing by the Authorized Representative of the Community, Mesa shall not be credited for having made available for Delivery in any Year more than one thousand five hundred (1,500) acre-feet over the amount of Mesa Reclaimed Water that Mesa was obligated to make available for Delivery in that Year in accordance with Subparagraph 6.6.1.

6.9 Water Exchange Monthly and Annual Reports.

6.9.1 No later than the 15th of each month the Authorized Representative of the Community shall report, in writing, to the Authorized Representative of Mesa the quantity of Mesa Reclaimed Water Delivered during the previous month. If Mesa disagrees with the quantities reported as having been Delivered on a monthly basis, the Authorized Representative of Mesa shall have forty-five (45) calendar days from the date that the Community report was received to submit, in writing, a challenge to the same. If such a challenge is made, the Authorized Representatives shall meet within fourteen (14) calendar days after such challenge is made to attempt to informally resolve the dispute. If

the dispute is not resolved thereby, the dispute shall be resolved pursuant to Subparagraph 7.2.

6.9.2 No later than February 15th of each Year the Authorized Representative of the Community shall report, in writing, to the Authorized Representative of Mesa the amount of Mesa Reclaimed Water Delivered during the previous Year. If Mesa disagrees with the quantities reported as having been Delivered on an annual basis, the Authorized Representative of Mesa shall have forty-five (45) calendar days from the date that the report was received to submit, in writing, a challenge to the same. Challenges to an annual report shall be limited to (A) unresolved challenges made pursuant to Subparagraph 6.9.1, or (B) any information contained in an annual report that was not contained in a monthly report for which the challenge period has not yet expired. If such a challenge is made, the Authorized Representatives shall meet within fourteen (14) calendar days after such challenge is made to attempt to informally resolve the dispute. If the dispute is not resolved thereby, the dispute shall be resolved pursuant to Subparagraph 7.2.

6.9.3 On the same schedule as the Authorized Representative of the Community reports to Mesa in accordance with Subparagraph 6.9.1 and 6.9.2, the Authorized Representative of Mesa shall report, in writing, to the Authorized Representative of the Community any amount of Mesa Reclaimed Water made available for Delivery but not accepted by the Community for reasons other than those set forth in Subparagraph 6.6.2. If the Community disagrees with either the quantities reported as having been made available for Delivery or believes that the Community's failure to accept such Delivery was excused pursuant to Subparagraph 6.6.2, the Authorized Representative of the

Final Execution Version  
October 21, 2005

Community shall challenge Mesa's report within the timelines described in Subparagraphs 6.9.1 and 6.9.2 and be subject to the same dispute resolutions procedures described therein.

6.9.4 Failure to submit a timely challenge to any report in accordance with Subparagraphs 6.9.2 and 6.9.3 shall constitute a waiver of the right to challenge the same and unchallenged reports shall be deemed accurate and valid.

6.9.5 Unless otherwise agreed upon in writing by the Authorized Representatives of the Community and Mesa, Mesa shall not be credited for:

6.9.5.1 Having made Mesa Reclaimed Water available for Delivery when the Community was excused from accepting Delivery in accordance with Subparagraph 6.6.2 and did not accept Delivery; or

6.9.5.2 Having made more than ten percent (10%) over the quantity of Mesa Reclaimed Water available for Delivery than was scheduled for Delivery during the applicable reporting period.

6.9.6 Mesa shall be credited with having made available for Delivery in any Year such quantities of Mesa Reclaimed Water reported by the Authorized Representative of the Community pursuant to Subparagraph 6.9.2 and any amounts reported as having been made available for Delivery in that Year, but not accepted by the Community, pursuant to Subparagraph 6.9.3, after resolving disputes pursuant to this Subparagraph 6.9.

6.9.7 Nothing in this Subparagraph 6.9 shall affect Mesa's and the Community's respective obligations to use best efforts to reschedule Deliveries in accordance with Subparagraph 6.6.5.

6.10. Adjustment for Deliveries.

6.10.1. If the amount of Mesa Reclaimed Water that Mesa is credited with having made available for Delivery in any Year is different from the amount that Mesa is obligated to have made available for Delivery, Mesa shall, in the next Year:

6.10.1.1. If Mesa is credited with having made available for Delivery less Reclaimed Water than Mesa is obligated to have made available for Delivery, cause such additional quantities of Mesa Reclaimed Water to be made available for Delivery during the following Year, pursuant to a schedule to be developed by Mesa and the Community in accordance with Subparagraph 6.5, to make up the difference; or

6.10.1.2. If Mesa is credited with having made available for Delivery more Reclaimed Water than Mesa is obligated to have made available for Delivery, cause such lesser quantities of Mesa Reclaimed Water to be made available for Delivery during the following Year, pursuant to a schedule to be developed by Mesa and the Community in accordance with Subparagraph 6.5, to make up the difference; or

6.10.1.3. If Mesa is credited with making either more or less Reclaimed Water available for Delivery than Mesa was obligated to make available for Delivery and has established an account in accordance with Subparagraph 6.18, debit or credit such account, as is appropriate, up to a maximum of one thousand five hundred (1,500) acre-feet and, if necessary, make such additional adjustments as are necessary in accordance with Subparagraphs 6.10.1.1 and 6.10.1.2, above.

6.11. Preconditions to Commencement of Delivery.

6.11.1. Delivery under this Paragraph 6.0 shall not commence until the occurrence of the Enforceability Date and completion of all of the following:

6.11.1.1. The Community shall have constructed or caused to be constructed the infrastructure improvements, including but not limited to such facilities as are required for blending pursuant to Subparagraph 6.13, that are needed to accept Mesa's Delivery;

6.11.1.2. Mesa shall have constructed or caused to be constructed the Mesa Pipeline or such alternative structure as may be required for Mesa to Deliver in accordance with the requirements of Subparagraph 6.6.1;

6.11.1.3. The Community shall have installed or caused to be installed the measuring device described in Subparagraph 6.16.1;

6.11.1.4. Mesa's CAP Delivery Subcontract and Subcontract Among the United States, Central Arizona Water Conservation District and the City of Mesa Providing for Water Services, dated December 21, 1993, have been amended to delete the provisions that require that any CAP water received by Mesa from any Indian Tribe in exchange for effluent shall diminish Mesa's entitlement to CAP water under Mesa's CAP Delivery Subcontracts and such contracts have been amended to conform to the shortage sharing provisions of subparagraph 8.16 of the Settlement Agreement.

6.11.1.5. The CAP Capital Repayment costs attributable to Community CAP Water shall have been made non-reimbursable.

6.11.1.6. Funds shall have been made available for the Secretary to pay, in accordance with section 205(a)(6) of the Act, CAP Fixed OM&R Charges for Delivery of Community CAP Water.

6.11.1.7. All environmental requirements pursuant to federal and state law necessary to implement the provisions of this Exchange Agreement shall have been met.

6.11.2. All infrastructure improvements required by Subparagraphs 6.11.1.1, 6.11.1.2, and 6.11.1.3 shall be made within five (5) years after the Enforceability Date.

6.12. Shortage of Community CAP Indian Priority Water.

6.12.1. If there is no shortage of CAP water as defined in Subparagraph 8.16.1 of the Settlement Agreement such that the quantity of Community CAP Indian Priority Water is reduced, the Community shall not reduce the amount of Community CAP Exchange Water available to Mesa pursuant to this Exchange Agreement.

6.12.2. If there is a shortage of CAP water as defined in Subparagraph 8.16.1 of the Settlement Agreement, such that the quantity of Community CAP Indian Priority Water is reduced, then the Authorized Representative of the Community shall, within sixty (60) days after receipt of written notice of the same from the Secretary or the Operating Agency, provide written notice to the Authorized Representative of Mesa as to whether or not the Community intends to reduce the amount of Community CAP Water it will make available to Mesa pursuant to this Paragraph 6.0 and, if so, the percentage amount of such reduction. The Community may reduce the amount of Community CAP Water available to Mesa, but not by more than the percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with Subparagraph 8.16.2 of the Settlement Agreement.

6.13. Blending Water.

6.13.1. The Community shall provide sufficient water from any source of water described in Subparagraph 4.1 of the Settlement Agreement, other than effluent, to blend with Delivered Mesa Reclaimed Water so that such Mesa Reclaimed Water comprises no more than fifty percent (50%), by volume, of all water in the Community's Water

Final Execution Version  
October 21, 2005

Delivery System at the confluence of the Mesa Pipeline and the Community's Water Delivery System or at such other location as may be agreed upon by the Authorized Representatives of the Community and Mesa.

6.13.2. If the Community is unable to schedule such blending water, due solely to factors outside of the control of the Community, it shall be excused from its obligation to accept Delivery of Mesa Reclaimed Water, but only to the extent that such inability would result in Mesa Reclaimed Water comprising more than fifty percent (50%), by volume, of all water in the Community's Water Delivery System at the confluence of the Mesa Pipeline and the Community's Water Delivery System or at such other location as may be agreed upon by the Authorized Representatives of the Community and Mesa.

6.13.3. If such blending water is available and the Community fails to order or provide the same to achieve the fifty percent (50%) blend referenced in this Subparagraph 6.13 Mesa shall continue to be credited with having made such quantities of Mesa Reclaimed Water available for Delivery as are scheduled for Delivery. Mesa shall, if requested by the Community, continue Delivery.

6.14. Community and Mesa OM&R Activities.

6.14.1. In the event that notice of specific dates of OM&R activities cannot be provided at the meeting required by Subparagraph 6.4.1 the Community shall provide estimated dates for scheduled OM&R activities for the ensuing Year and shall give notice of the specific dates of such scheduled OM&R activities at least forty-five (45) days prior to initiating the same. Unless otherwise agreed to in writing by the Authorized Representatives of the Community and Mesa, such scheduled OM&R activities shall not last more than thirty (30) days in any Year. The Community and Mesa shall make their

best efforts to coordinate any scheduled OM&R activities of their respective systems or any portion thereof to meet their Delivery and acceptance obligations.

6.14.2. Mesa and the Community shall notify each other as soon as practicable of any events or circumstances not scheduled in accordance with Subparagraph 6.14.1 that may limit their ability to Deliver or accept Delivery of Mesa Reclaimed Water.

6.14.2.1. The Community and Mesa shall make their best efforts to coordinate any events or circumstances not scheduled in accordance with Subparagraph 6.14.1 that may limit their ability to Deliver or accept Delivery of Mesa Reclaimed Water in accordance with this Exchange Agreement. If such events or circumstances occur, Mesa and the Community shall use their best efforts to amend the schedules in accordance with Subparagraph 6.5.2, such that the total quantities of Mesa Reclaimed Water that Mesa and the Community are obligated to Deliver and accept in the then current Year can be Delivered and accepted.

6.15. Transportation Losses.

6.15.1. Mesa shall be responsible for transportation losses of Mesa Reclaimed Water occurring before such water reaches the Mesa Point of Delivery. The Community shall be responsible for transportation losses of Mesa Reclaimed Water occurring after such water passes the Mesa Point of Delivery.

6.16. Measuring Devices.

6.16.1. The Community shall install, calibrate, and maintain, at its expense, a measuring device at the Mesa Point of Delivery to measure Deliveries.

6.16.2. Mesa may install flow meter(s) at the Plant(s) to measure Deliveries.

6.16.3. The measuring devices installed pursuant to Subparagraphs 6.16.1 and 6.16.2 shall be of a type which is acceptable to Mesa and the Community and whose accuracy is commensurate with industry standards for measuring devices used for similar purposes.

6.16.4. At least annually for the first three (3) years after the installation of the measuring device required pursuant to Subparagraph 6.16.1, the Community shall provide a registered professional engineer to inspect, and, if necessary, correct the accuracy thereof and the procedures used by the Community for measurement of water. After the third anniversary of the installation of the device, inspections shall occur at least every third year. Within thirty (30) days of such inspections the Community shall provide Mesa with a certified copy of the report by the registered professional engineer that sets forth the findings of the inspection and a verification that the measuring and recording devices and procedures satisfy industry standards. At any time Mesa may require, upon seven (7) days notice, an inspection by a registered professional engineer of the measuring device provided for by Subparagraph 6.16.1. If the results of the inspection show that the device's measurement accuracy is within industry standards, then Mesa shall pay all costs incurred for the inspection. Otherwise, the Community shall bear such costs.

6.17. Force Majeure Event.

6.17.1. When Mesa or the Community is unable to Deliver or accept Delivery of Mesa Reclaimed Water due to Force Majeure Events, the parties' obligations to Deliver and accept Delivery under this Paragraph 6.0 shall be suspended during the period of such Force Majeure Events. After the period has ended, Mesa and the Community shall

use their best efforts to amend the schedules in accordance with Subparagraph 6.5.2, such that the total quantities of Mesa Reclaimed Water that Mesa and Community are obligated to Deliver and accept in the then current Year can be Delivered and accepted.

6.18. Mesa Advance Credits.

6.18.1. If Mesa requests and the Community agrees, Mesa shall establish an account to allow Mesa to make “advance Deliveries” such that Mesa is able to establish and maintain a credit balance of not more than one thousand five hundred (1,500) acre-feet at all times.

6.19. Payment for delivery of Community CAP Water.

6.19.1. Whenever funds are available from the Lower Colorado River Basin Development Fund in accordance with section 205(a)(6) of the Act, in such other fund as Congress may authorize, or through annual appropriations, to be used by the United States to pay CAP Fixed OM&R Charges for delivery of Community CAP Water, the United States shall pay the CAP Operating Agency the CAP Fixed OM&R Charges associated with delivery of Community CAP Exchange Water to Mesa in advance of delivery as if the Community CAP Exchange Water had been delivered to the Community. Such payments shall be in accordance with Paragraph 4 (f) of the CAP Repayment Stipulation. If funds are so available to be used by the United States to pay CAP Fixed OM&R Charges for delivery of Community CAP Water and the United States fails to pay the CAP Fixed OM&R Charges associated with the delivery of Community CAP Exchange Water to Mesa in advance of delivery, Mesa may, at its option, either discontinue Delivery or pay such CAP Fixed OM&R Charges itself and shall retain the right to seek recovery under any cause of action which it may have against

Final Execution Version  
October 21, 2005

the United States. If, for a period of three (3) years, Mesa chooses to not Deliver as provided in this Subparagraph 6.19.1, the Community may, at its option, terminate this agreement as to Mesa and all relative obligations hereunder.

6.19.2. If the United States does not have funds available to pay CAP Fixed OM&R Charges for delivery of CAP Community Water as described in Subparagraph 6.19.1, herein, Mesa shall pay the CAP Operating Agency the CAP Fixed OM&R Charges associated with delivery of Community CAP Exchange Water to Mesa in advance of delivery.

6.19.3. Mesa shall pay the CAP Operating Agency the CAP Pumping Energy Charges associated with the delivery of Community CAP Exchange Water to Mesa in advance of such delivery.

6.19.4. In accordance with Subparagraph 8.20 of the Settlement Agreement, no CAP water service capital charges shall be due or payable for Community CAP Water delivered pursuant to this Exchange Agreement, and Mesa shall not be obligated to pay any CAP water service capital charges, or any other capital charges associated with the Community CAP Exchange Water delivered to Mesa pursuant to this Exchange Agreement.

6.19.5. In no event shall the Community be liable for any payment of any kind, in any capacity, to or on behalf of Mesa in regard to any Community CAP Exchange Water delivered to, on behalf of, or by Mesa.

6.20. Amendment of Exchange Agreement as between Mesa and the Community.

6.20.1. The provisions of this Exchange Agreement relating to Mesa and the Community may be amended by written agreement between Mesa and the Community

without court approval or the need for consent or approval of any other Party to this Exchange Agreement or parties to the Settlement Agreement unless such approval is required by law; provided, however, that no such amendment may violate any provisions of the Act or Settlement Agreement, or adversely affect the rights under the Settlement Agreement of any party to the Settlement Agreement or adversely affect the rights under this Exchange Agreement of any Party hereto who is not a signatory to such amendment.

6.21. Mesa Point of Delivery.

6.21.1. Unless mutually agreed to in writing by Mesa's and the Community's Authorized Representatives, Mesa Reclaimed Water shall be Delivered at the Mesa Point of Delivery.

**7.0 General Provisions**

7.1 Nothing in this Exchange Agreement shall be construed to establish, or to imply the existence of, any obligations owed by Chandler to Mesa or by Mesa to Chandler. Paragraphs 5.0 and 6.0 were negotiated wholly independently of one another and no similarities or distinctions between those two paragraphs are intended to, and shall not, be used to interpret the Parties' intent.

7.2 Should any dispute arise as to any issue in relation to the interpretation or enforcement of this Exchange Agreement as between Chandler and the Community or as between Mesa and the Community, the affected Parties shall seek mediation in an attempt to resolve such dispute prior to initiating court action.

7.3 Chandler and Community – Indemnity and Waiver.

7.3.1 Chandler shall indemnify, defend and hold harmless the Community, and any and all of its Council, agents and employees from and against any and all claims,

Final Execution Version  
October 21, 2005

demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses, and liabilities for injury or death of any person or persons, or for damage or damages to property occasioned by or arising from any act, omission, professional error, fault, mistake or negligence of Chandler, and its employees, agents or representatives in conjunction with or incident to its performance under this Exchange Agreement or occasioned by or arising from Chandler's breach of its duties set forth under this Exchange Agreement.

7.3.2 The Community shall indemnify, defend and hold harmless Chandler and any and all of its Council members, agents and employees from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses and liabilities for injury or death of any person or persons, or for damage or damages to property occasioned by or arising from any act, omission, professional error, fault, mistake or negligence of Community, and its employees, agents or representatives in conjunction with or incident to its performance under this Exchange Agreement or occasioned by or arising from Community's breach of its duties set forth under this Exchange Agreement.

7.3.3 Chandler shall indemnify, defend and hold harmless the Community, and any and all of its Council, agents and employees from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses, and liabilities for injury or death of any person or persons, or for damage or damages to property occasioned by or arising from: (1) the Delivery of any Chandler Reclaimed Water which is produced by a Plant in Non-Attainment and which has not been accepted by the Community (pursuant to either Subparagraphs 4.3.2.2 or

5.6.9) and (2) the delivery of all Community CAP Exchange Water to Chandler pursuant to this Exchange Agreement.

7.3.4 The Community shall indemnify, defend, and hold harmless Chandler and any and all of its Council members, agents and employees from and against any and all claims, demands, expenses and liabilities for injury or death of any person or persons, or for damage or damages, to property occasioned by or arising from the Delivery of any Chandler Reclaimed Water produced by a Plant in Attainment and not in Exceedance and which is Delivered in accordance with this Exchange Agreement, or produced by a Plant in Non-Attainment and Delivered in accordance with this Exchange Agreement, except that such indemnification shall not apply to any actions that may be taken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. section 9601, *et seq.*

7.3.5 In addition to the provisions of Paragraph 25.0 of the Settlement Agreement, the Community hereby waives and releases any and all claims and damages asserted against Chandler, and any and all of its council members, agents and employees under Federal, State, Tribal or other law arising out of the Delivery of Chandler Reclaimed Water from a Plant in Attainment and not in Exceedance or that otherwise meets the provisions of Paragraph 4.0.

7.3.6 In addition to the provisions of Paragraph 25.0 of the Settlement Agreement, Chandler hereby waives and releases any and all claims and damages asserted against the Community, and any and all of its council members, agents and employees under Federal, State, Tribal or other law as a result of the delivery of Community CAP Water to Chandler in accordance with this Exchange Agreement.

7.4 Mesa and Community – Indemnity and Waiver.

7.4.1 Mesa shall indemnify, defend and hold harmless the Community, and any and all of its Council, agents and employees from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses, and liabilities for injury or death of any person or persons, or for damage or damages to property occasioned by or arising from any act, omission, professional error, fault, mistake or negligence of Mesa, and its employees, agents or representatives in conjunction with or incident to its performance under this Exchange Agreement or occasioned by or arising from Mesa's breach of its duties set forth under this Exchange Agreement.

7.4.2 The Community shall indemnify, defend and hold harmless Mesa and any and all of its Council members, agents and employees from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses and liabilities for injury or death of any person or persons, or for damage or damages to property occasioned by or arising from any act, omission, professional error, fault, mistake or negligence of Community, and its employees, agents or representatives in conjunction with or incident to its performance under this Exchange Agreement or occasioned by or arising from the Community's breach of its duties set forth under this Exchange Agreement.

7.4.3 The Community shall indemnify, defend and hold harmless the United States from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses and liabilities for injury or death of any person or persons, or for damage or damages to property occasioned by or arising

from any act, omission, professional error, fault, mistake or negligence of Community, and its employees, agents or representatives in conjunction with or incident to its performance under this Exchange Agreement or occasioned by or arising from the Community's breach of its duties set forth under this Exchange Agreement, including the Community's decision or determination to accept Delivery of Reclaimed Water that does not meet the A+ Reclaimed Water Quality Standards. Except as prohibited by Federal law, the Community shall have the exclusive and independent right to accept the Delivery of water that does not meet A+ Reclaimed Water Quality Standards.

7.4.4 Mesa shall indemnify, defend and hold harmless the Community, and any and all of its Council, agents and employees from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses, and liabilities for injury or death of any person or persons, or for damage or damages to property occasioned by or arising from: (1) the Delivery of any Mesa Reclaimed Water which is produced by a Plant in Non-Attainment and which the Community did not accept for Delivery and (2) the delivery of all Community CAP Exchange Water to Mesa pursuant to this Exchange Agreement.

7.4.5 The Community shall indemnify, defend, and hold harmless Mesa and any and all of its Council members, agents and employees from and against any and all claims, demands, expenses and liabilities for injury or death of any person or persons, or for damage or damages, to property occasioned by or arising from the Delivery of any Mesa Reclaimed Water produced by a Plant in Attainment or otherwise in accordance with Paragraph 4.0, and Delivered in accordance with this Exchange Agreement, except that such indemnification shall not apply to any actions that may be taken pursuant to the

Final Execution Version  
October 21, 2005

Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. section 9601, *et seq.*

7.4.6 In addition to the provisions of Paragraph 25.0 of the Settlement Agreement, the Community hereby waives and releases any and all claims and damages asserted against Mesa, and any and all of its council members, agents and employees under Federal, State, Tribal or other law arising out of the Delivery of Mesa Reclaimed Water from a Plant in Attainment or that otherwise meets the provisions of Paragraph 4.0 and which the Community either accepts, or is required to accept, for Delivery.

7.4.7 In addition to the provisions of Paragraph 25.0 of the Settlement Agreement, Mesa hereby waives and releases any and all claims and damages asserted against the Community, and any and all of its council members, agents and employees under Federal, State, Tribal law other law arising out of the Delivery of Community CAP Exchange Water delivered to Mesa in accordance with this Exchange Agreement.

7.4.8 In addition to the provisions of Paragraph 25.0 of the Settlement Agreement, the Community hereby waives and releases any and all claims and damages asserted against the United States in any and all of its capacities arising out of the Delivery of Reclaimed Water that the Community accepts under the terms and conditions of this Agreement.

7.5 Waiver of Sovereign Immunity.

7.5.1 The United States' waiver of its sovereign immunity contained in the Act applies to any claim or claims which Chandler, Mesa or the Community may have against it, which relate to the interpretation or enforcement of this Exchange Agreement. The Community's limited waiver of its sovereign immunity contained in the Act applies

to any claim or claims which Chandler or Mesa may have against it, which relate to the interpretation or enforcement of this Exchange Agreement.

7.6 Authorized Representatives and Notice.

7.6.1 Within thirty (30) calendar days after the date this Enforceability Date, Chandler, Mesa, and the Community shall each appoint an Authorized Representative and an alternate Authorized Representative to administer the provisions of this Exchange Agreement for which the Authorized Representative has responsibility, and notify each other of those appointments. The alternate Authorized Representative shall act only when the Authorized Representative is absent or otherwise unable to perform his or her duties under this Exchange Agreement. All decisions and agreements required to be made or entered into by the Authorized Representative shall be binding on a Party only if it is in writing and signed by the Party's Authorized Representative. Each Party shall notify the other Parties to this Exchange Agreement of any change in the identity of its Authorized Representative or alternate Authorized Representative. The Authorized Representatives shall also provide to each other a point of contact that can be reached in case of emergency or during times outside of normal business hours. Each Party shall notify the other Parties of any change in contact person information.

7.7 Notice.

7.7.1 Any notice or report required or provided for in this Exchange Agreement shall be made or sent to the contact person(s) identified below, or addressed to such other address as the Parties shall have designated by written notice given to the other Parties.

Final Execution Version  
October 21, 2005

COMMUNITY:

For issues relating to  
Reclaimed Water Quality

Gila River Indian Community  
Department of Environmental Quality  
P. O. Box 97  
Sacaton, Arizona 85247  
Phone: 520-562-2234  
Fax: 520-562-2245

For issues other than  
Reclaimed Water Quality

Gila River Indian Community  
Office of Water Rights  
5002 Maricopa Road, Box 5090  
Chandler, Arizona 85226  
Phone: 520-796-1344  
Fax: 520-796-1347

CITY OF CHANDLER:

Public Works Director  
City of Chandler  
P. O. Box 4008, MS 403  
Chandler, Arizona 85224-4008  
Phone: (480) 782-3400  
Fax: (480) 782-3415

CITY OF MESA:

For issues relating to  
Reclaimed Water Quality

Utilities Manager  
City of Mesa  
P. O. Box 1466  
Mesa, Arizona 85211-1466  
Phone: 480-644-2741  
Fax: 480-644-2768

For issues other than  
Reclaimed Water Quality

City Manager  
City of Mesa  
P. O. Box 1466  
Mesa, Arizona 85211-1466  
Phone: 480-644-3333

UNITED STATES:

Secretary of the Interior  
Department of the Interior  
Washington, D.C.

Area Director  
Phoenix Area Office  
Bureau of Indian Affairs  
P. O. Box 10  
Phoenix, Arizona 85001

Bureau of Reclamation  
Lower Colorado Region  
P. O. Box 427  
Boulder City, Nevada 89005

7.8 Other Important Provisions.

7.8.1 Failure by any Party to enforce any provision of this Exchange Agreement shall not serve to waive the right of that Party to enforce that or any other provision in the future and in accordance with the terms and conditions of this Exchange Agreement.

7.8.2 No remedy identified in this Exchange Agreement shall be deemed to be an exclusive remedy or to otherwise in any way limit the remedies available to any Party either under this Exchange Agreement or at law or in equity.

7.8.3 The terms of this Exchange Agreement relating to Chandler and the Community shall remain in effect notwithstanding any failure of or dispute regarding the Exchange Agreement between Mesa and the Community.

7.8.4 The terms of this Exchange Agreement relating to Mesa and the Community shall remain in effect notwithstanding any failure of or dispute regarding the Exchange Agreement between Chandler and the Community.

7.8.5 Nothing in this Exchange Agreement is intended to extend, amend or alter the obligations of Chandler and the Community with respect to the separate agreement between Chandler and the Community regarding the use, operation, or discharge of the Lone Butte Wastewater Treatment Facility. Water made available to the Community pursuant to that agreement shall not be considered Reclaimed Water for purposes of this Exchange Agreement.

7.8.6 The Community shall be solely responsible for ensuring that Reclaimed Water Delivered pursuant to this Exchange Agreement is properly used in accordance with all applicable laws and that all permits necessary for such use have been obtained.

7.8.7 If a Party, at any time, is unable to perform any of its obligations under this Exchange Agreement because such performance would cause that Party to violate any federal or state law, performance of that obligation shall be excused and the Parties, in good faith, shall attempt to negotiate such amendments to this Exchange Agreement as are necessary to ensure the Parties' full compliance with applicable law while preserving, to the extent possible, the benefits each Party obtains under this Exchange Agreement.

7.8.8 The Community represents and warrants that: (1) it is a federally-recognized Indian tribe, and (2) its execution, delivery and performance of this Agreement is duly authorized and lawful under applicable tribal laws.

7.8.9 The Community agrees:

7.8.9.1 To observe and perform all obligations imposed on the Community by the Community's CAP Water Delivery Contract which are not assumed by Chandler or Mesa so that Chandler's and Mesa's rights and duties under this Exchange Agreement are not in any way impaired;

7.8.9.2 Not to execute or amend any other exchange or lease of the Community's CAP Water that would impair Chandler's and Mesa's rights and duties hereunder;

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

7.8.9.4 Not to terminate or cancel the Community's CAP Water Delivery Contract or transfer, convey or permit a transfer or conveyance of the Contract so as to cause a termination of, interference with, or modification of the rights and obligations of the Community under the Community's CAP Water Delivery Contract.

7.8.9.5 Not to assert in any proceeding that a discharge from a Mesa Plant into the East Maricopa Floodway is a failure of the Maricopa County Flood Control District to comply with any term or condition of the Grant of Easement for Right-of-Way, executed April 12, 1979 (Pinal Co. Recorder No.620679), Grant of Easement for Right-of-Way, executed April 12, 1979 (Pinal Co. Recorder No. 620680), or Assignment of Queen Creek Floodway Right-of-Way, executed May 8, 1979 (Pinal Co. Recorder No. 620678).

7.8.10 Chandler represents and warrants that its execution, delivery and performance of this Exchange Agreement has been duly authorized and entered into in compliance with the Chandler City Code.

7.8.11 Mesa represents and warrants that its execution, delivery and performance of this Exchange Agreement has been duly authorized and entered into in compliance with the Mesa City Code.

7.8.12 This Exchange Agreement shall be governed by and construed under applicable federal and State law. This Agreement shall be deemed made and entered into in Maricopa County.

7.8.13 This Exchange Agreement is the result of arms-length negotiations between the Parties of roughly equivalent bargaining power and expresses the complete, actual and intended agreement of the Parties. This Exchange Agreement shall not be

construed for or against either Party as a result of its participation, or the participation of its counsel, in the preparation and drafting of the Exchange Agreement.

7.8.14 The Parties agree that in the event of litigation between the Parties to enforce this Exchange Agreement, after a final non-appealable judgment by a court of competent jurisdiction, the prevailing Party shall be entitled to recover reasonable costs and attorney's fees; provided however, that this Subparagraph 7.8.14 shall not apply to the United States.

7.8.15 Time is of the essence with respect to the performance of all terms, covenants, and provisions of this Exchange Agreement.

7.8.16 Nothing in this Exchange Agreement shall constitute a relinquishment to Chandler, to Mesa or to any other entity of any right, entitlement, or ownership interest in the Community's CAP Water Delivery Contract.

7.8.17 Except as noted in Subparagraphs 5.21.1 and 6.20.1, no modification of or amendment to this Exchange Agreement shall be effective unless it is in writing, and signed by all Parties.

7.8.18 The expenditure or advance of any money or the performance of any obligation by the United States, in any of its capacities, under this Exchange Agreement shall be contingent upon: (1) the appropriation of funds or, (2) in the case of the payment of Fixed OM&R Charges, funds are available in accordance with Subparagraphs 6.19 and 5.19 of this Exchange Agreement. No liability shall accrue to the United States, in any of its capacities, in the event funds are not appropriated or so otherwise available.

7.8.19 This Exchange Agreement may be executed in duplicate originals, each of which shall constitute an original agreement.

7.8.20 This Exchange Agreement shall become enforceable upon the latter of the following date: (1) the date of its execution by all Parties; and (2) the Enforceability Date.

7.8.21 Each of the terms and conditions of this Exchange Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

7.8.22 There shall be no third party beneficiaries of this Exchange Agreement.

7.8.23 The Community's waivers of claims contained in this Exchange Agreement, are in addition to any waivers contained in the Settlement Agreement. The waivers of claims by Chandler and Mesa contained in this Agreement, are in addition to any waivers contained in the Settlement Agreement.

7.8.24 Subparagraph 7.1 of the Construction Agreement provides that the obligations and duties set forth in Subparagraphs 4.2, 4.3, 5.1, 7.3, 7.4, 7.5, 7.6 and 7.7 of that agreement shall survive the expiration of that Agreement to the extent not inconsistent with the Settlement Agreement. The Community and Chandler agree that:

7.8.24.1 Subparagraphs 4.3, 5.1, 7.3, and 7.6 of the Construction Agreement are expressly incorporated into this Exchange Agreement.

7.8.25 The provisions of Subparagraph 7.5 of the Construction Agreement shall be superseded by the provisions of Subparagraphs 7.2 and 7.5 of the Exchange Agreement, and those provisions shall apply to any obligations and duties which have survived the expiration of the Construction Agreement.

7.8.26 The Secretary, acting through the Regional Director for the Bureau of Reclamation shall be the authorized representative of the United States for purposes of any future amendments to this Agreement.

Final Execution Version  
October 21, 2005

8.0 Except as required by Subparagraph 4.1.2, the Community shall not impose any additional requirements regarding the treatment or Delivery of Reclaimed Water pursuant to this Agreement, other than those requirements set forth in this Exchange Agreement.

Final Execution Version  
October 21, 2005

GILA RIVER INDIAN COMMUNITY

By: Richard P. Nunez  
Dated: \_\_\_\_\_

Governor

Attest: Janice J. Stewart

Approved as  
To Form: Jennifer B. Hoff  
General Counsel

CITY OF CHANDLER

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

Mayor

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

Final Execution Version  
October 21, 2005

GILA RIVER INDIAN COMMUNITY

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

Governor

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

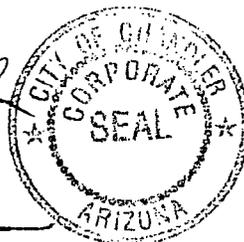
Approved as  
To Form: \_\_\_\_\_  
General Counsel

CITY OF CHANDLER

By: \_\_\_\_\_  
Dated: 12-23-2005

Mayor

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

Final Execution Version  
October 21, 2005

GILA RIVER INDIAN COMMUNITY

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

Governor

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

Approved as  
To Form: \_\_\_\_\_  
General Counsel

CITY OF CHANDLER

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

Mayor

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

Approved as  
To Form: \_\_\_\_\_  
City Attorney

CITY OF MESA

By: [Signature]  
Dated: 10/21/05

City Manager

Attest: [Signature]  
City Clerk

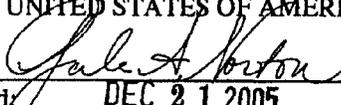
Approved as  
To Form: [Signature]  
City Attorney



Final Execution Version  
October 21, 2005

THE UNITED STATES OF AMERICA

By:

  
Dated: DEC 21 2005  
Secretary of the Interior

## **EXHIBIT B**

### **DISPUTE RESOLUTION**

The Parties agree that the following procedures shall govern the resolution of disputes arising under this Agreement.

1. **Amicable resolution.** The Parties shall attempt to resolve all claims, disputes, controversies or other matters in question between the Parties arising out of, or relating to, this Agreement (“Dispute”) promptly, equitably and in a good faith manner.
2. **Mediation.** Prior to submitting any Dispute to arbitration the Parties may, but are not required to, submit any Dispute that cannot be resolved between the Parties. The mediation, if any, shall be conducted by a mediator jointly selected by the Parties. The mediator’s deliberations are confidential and shall not be disclosed to third parties. The mediator shall be disqualified as a witness, consultant, or expert for either Party in any Dispute. If mediation does not successfully resolve a Dispute, each Party shall be free to submit the Dispute to arbitration pursuant to this Exhibit B. Neither Party is required to submit any Dispute to mediation in order to proceed with arbitration as provided herein.
3. **Submission to arbitration.** Either Party may submit any Dispute that cannot be resolved between the Parties to arbitration by written notice to the other Party.
4. **Notice of arbitration.** The notice for arbitration shall specify with particularity the nature of the Dispute, the particular provisions of this Agreement that are at issue, and the proposed relief sought by the Party seeking arbitration.
5. **Appointment of arbitrators.** The arbitration shall be conducted before a panel composed of three (3) arbitrators, each of whom shall be a person familiar, by profession or experience, with the issues in controversy. Within ten (10) days after delivery of a notice of arbitration, each Party shall appoint an arbitrator, obtain its appointee’s acceptance of such appointment and deliver written notification of such appointment and acceptance to the other Party. Within ten (10) days of being appointed, the two (2) Party-appointed arbitrators shall jointly appoint the third (who shall be the chairperson), and shall obtain the acceptance of such appointment and deliver written notification of such appointment and acceptance to the Parties. If an arbitrator is not timely appointed as provided herein, a Party may petition a court of competent jurisdiction for the appointment of an arbitrator.
6. **Disqualification of an arbitrator.** No person may serve as an arbitrator if, because of employment or other relationship with a Party, the nature of the matter to be arbitrated, or otherwise, such person could not serve as a judge in such matter if such person were a judge.
7. **Rules of arbitration.** The arbitration shall be governed by the Commercial Arbitration Rules (“CAR”) of the American Arbitration Association (“AAA”) in effect as of the date of the notice in section 4 of this Exhibit B; however, the parties agree that, while the CAR apply to this matter, the AAA shall not administer or in any manner be involved in the arbitration. Any administrative functions that would normally be performed under the CAR by the AAA will be undertaken by the neutral arbitrator. In the event of any conflict between this Exhibit B and the CAR, the terms of Exhibit B will govern. The parties further agree that any waiver of sovereign immunity by the Community shall be governed solely by section 15 of this Exhibit B. The Parties agree that the arbitrators may utilize the disclosure and discovery provisions of the Arizona Rules of Civil Procedure and the Arizona Rules of Evidence as may be necessary for the arbitration.
8. **Time.** Time is of the essence in the resolution of Disputes pursuant to this Exhibit B. All deadlines established herein shall be strictly enforced by the arbitrators and the Parties.

9. **Arbitration hearing.** The arbitrators may, in their sole discretion determine whether a hearing would assist them in rendering a fair and equitable decision. In any event, such hearing, if held, must be held within 180 calendar days after written notice of the appointment of the third arbitrator has been received by the Parties.

10. **Conduct of arbitration.** The arbitrators shall comply with and follow the CAR with respect to impartiality and independence, and shall render an independent, impartial review of the claim(s) presented, and each arbitrator shall act independently and shall not be either Party's representative. The arbitrators' deliberations are confidential and shall not be disclosed to third parties. Each arbitrator shall be disqualified as a witness, consultant, or expert for either Party in any Dispute. No written communication shall be permitted between the arbitrators and a Party without the other Party receiving a copy of such written communication, and no oral communications shall take place without the other Party being present.

11. **Arbitration award.** The arbitrators shall render a reasoned decision and award, by majority vote, no later than 21 calendar days after conclusion of the arbitration hearing, if any, or within 180 days after written notice of the appointment of the third arbitrator has been received by the Parties if no arbitration hearing is held.

12. **Arbitration remedies.** The sole remedy available to the parties, and which may be made by the arbitrators, is specific performance of the provisions of this Agreement and the arbitrators may not seek to impose damages on either Party as a remedy in such arbitration. The provisions of this Agreement shall be binding on the arbitrators and nothing in this Agreement shall be construed to allow the arbitrators to modify this Agreement in any way.

13. **Enforcement of arbitration award.** The arbitrators' decision will be final and binding on the Parties and will not be subject to appeal. The prevailing Party in such arbitration may seek enforcement of such award in any court of competent jurisdiction as provided in the CAR. Each Party agrees to submit to the jurisdiction of any such court solely for purposes of the enforcement of such arbitration decision and for no other purpose.

14. **Costs of arbitration.** The costs of the arbitration, as documented by invoices submitted to the Parties by the arbitrators, shall be shared equally by the Parties, but the Parties shall bear their own costs and attorneys' fees associated with their participation in the arbitration.

15. **Limited waiver of sovereign immunity.** The Community hereby provides a strictly limited waiver of its sovereign immunity in any court of competent jurisdiction for the sole and exclusive purpose of enforcement of an arbitration award rendered pursuant to this Exhibit B and for no other purpose. The waiver of sovereign immunity provided by the Community extends solely to Lessee and to no other person or party.

**PURCHASE AND SALE AGREEMENT  
FOR  
LONG-TERM STORAGE CREDITS**

THIS PURCHASE AND SALE AGREEMENT FOR LONG-TERM STORAGE CREDITS (this "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2016, between Gila River Water Storage, LLC, a Delaware limited liability company ("Seller"), and the City of Chandler, a municipal corporation of the State of Arizona ("Buyer").

**ARTICLE 1  
RECITALS**

A. Buyer desires to purchase Long-Term Storage Credits developed by Seller pursuant to Arizona Revised Statutes Title 45, Chapter 3.1.

B. Seller is willing to sell and transfer certain Long-Term Storage Credits in the amount, at the delivery time, and for the price specified in this Agreement.

C. Buyer acknowledges that the effort and expense necessary to transfer Long-Term Storage Credits from Seller to Buyer and that the Buyer already recovers Phoenix Active Management Area Long-Term Storage Credits ("Phoenix LTSCs") and has recovery well permits required for recovery of the Phoenix LTSCs.

D. Unlike the Phoenix LTSCs, however, the Buyer is going to use the Pinal Active Management Area LTSCs ("Pinal LTSCs") as a payment medium for Leased Water in accordance with the Lease Agreement for CAP Water between City of Chandler and the Gila River Indian Community ("Lease Agreement") which is executed at the same time as this Agreement and is part of the broader agreement relating to the provision and acquisition of water among the Buyer, Seller, and Gila River Indian Community ("Community") in accordance with the Collateral Agreements, as defined in Section 2(D).

E. The parties acknowledge that the consideration they receive under this Agreement represents fair market value provided that the parties to the Collateral Agreements fulfill all of their obligations under this Agreement and all of the Collateral Agreements.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

**ARTICLE 2  
DEFINITIONS**

The terms and phrases as used in this Agreement, when capitalized, shall mean: as follows. Capitalized terms and phrases used in this Agreement that are undefined herein shall have same meaning as in other Collateral Agreements.

- A. “ADWR” means the Arizona Department of Water Resources.
- B. “Agreement” means this Purchase and Sale Agreement for Long-Term Storage Credits.
- C. “Buyer” has the meaning given that term in the introductory paragraph of this Agreement.
- D. “Collateral Agreements” shall mean two (2) other agreements among the Buyer, the Seller, and Community, consisting of the Lease Agreement and the Reclaimed Water Exchange Agreement between the City of Chandler and the Gila River Indian Community entered on the same date as this Agreement.
- E. “Community” shall mean the Gila River Indian Community, a federally recognized Indian governmental entity composed of members of the Pima Tribe and the Maricopa Tribe, which is organized under Section 16 of the Act of June 18, 1934 (25 U.S.C. § 476).
- F. “Force Majeure Events” means any one or more of the following which prohibits or materially interferes with, delays or alters the performance of the applicable duty under this Agreement: strikes or lockouts; shortages of material (excluding those caused by lack of funds) or labor; acts of the public enemy; confiscation or seizure by any government or public authority; injunction, restraining order or other court order or decree; blockades; insurrections; riots; civil disturbances; epidemics; acts of nature; fires; explosions; nuclear reaction or radiation; radioactive contamination; any other similar cause (excluding those caused by a Party’s lack of funds); and any other event not within the reasonable control of the applicable Party.
- G. “Gila River Water Storage LLC Current Price” means the price per acre-foot for comparable Long-Term Storage Credits that are offered for sale by Gila River Water Storage LLC.
- H. “Long-Term Storage Account” means an account established in Buyer’s, Seller’s or Community’s name pursuant to Arizona Revised Statutes § 45-852.01.
- I. “Long-Term Storage Credit” or “LTSC” has the meaning given that term in Arizona Revised Statutes § 45-802.01(11).
- J. “Phoenix LTSCs” has the meaning given that term in Recital C. and Section 3.3.2.
- K. “Pinal LTSCs” has the meaning given that term in Recital D. and Section 3.3.3.
- L. “Seller” has the meaning given that term in the introductory paragraph of this Agreement.
- M. “Seller’s Phoenix AMA Long-Term Storage Account” means an account established in Seller’s name pursuant to Arizona Revised Statutes § 45-852.01 for Long-Term Storage Credits stored in the Phoenix Active Management Area.

N. “Seller’s Pinal AMA Long-Term Storage Account” means an account established in Seller’s name pursuant to Arizona Revised Statutes § 45-852.01 for Long-Term Storage Credits stored in the Pinal Active Management Area.

O. “Transfer Form” has the meaning given that term in Section 3.1.

P. “Leased Water” has the meaning set forth in Subparagraph 5.1 of the Lease Agreement.

**ARTICLE 3  
PURCHASE AND SALE  
OF LONG-TERM STORAGE CREDITS**

**3.1 Sale and Purchase.** Subject to the terms and conditions of this Agreement, Seller agrees to sell, transfer, and assign and Buyer agrees to purchase, accept, and pay for Phoenix LTSCs and Pinal LTSCs according to the delivery and payment terms in Article 5.

**3.2 Type of Water.** Seller covenants that all of the LTSCs sold pursuant to this Agreement have been or will be accrued through storage of surface water from the Central Arizona Project. The parties intend that all LTSCs purchased and sold under this Agreement shall retain the identity of the source of water used to generate such LTSCs. The parties shall do any acts necessary to cause such identity to be retained, and neither party shall do any acts which will cause such identity to be removed.

**3.3 Long-Term Storage Credits.**

3.3.1 The LTSCs to be sold by Seller pursuant to this Agreement are from Seller’s Long-Term Storage Accounts.

3.3.2 The Phoenix LTSCs to be sold by Seller pursuant to this Agreement have been stored in the Roosevelt Water Conservation District, a facility permitted by ADWR and located in the East Salt River Valley of the Phoenix Active Management Area.

3.3.3 The Pinal LTSCs to be sold by Seller pursuant to this Agreement have been stored in the Hohokam Irrigation and Drainage District, a facility permitted by ADWR and located in the Eloy Subbasin of the Pinal Active Management Area.

3.4 Volume of Long-Term Storage Credits. Buyer shall purchase pursuant to this Agreement 25,000 acre-feet of Phoenix LTSCs and 125,000 acre-feet of Pinal LTSCs.

3.5 Purchase Price and Payment Schedule. The price and payment schedule for the LTSCs sold pursuant to this Agreement shall correspond to the table below:

Payment Date	Pinal LTSC (acre-feet)	Rate	Sub-Total	Phoenix LTSC (acre-feet)	Rate	Sub-Total	Total Payment
Sept. 1, 2016	35,000	\$196	\$6,860,000	353	\$396	\$139,788	\$17,999,788
	50,000	\$220	\$11,000,000				

<b>August 1, 2017</b>	20,000	\$220	\$4,400,000	1,515	\$396	\$599,940	\$4,999,940
<b>August 1, 2018</b>	20,000	\$220	\$4,400,000	1,515	\$396	\$ 599,940	\$4,999,940
<b>August 1, 2019</b>	0	\$220	\$0	21,617	\$396	\$8,560,332	\$8,560,332
<b>Total</b>	125,000		\$26,660,000	25,000		\$9,900,000	\$36,560,000

The total price for LTSCs sold pursuant to this Agreement shall be \$36,560,000.00.

**3.6 Seller's Warranty of Title.** Seller represents and warrants to Buyer that it will have good and marketable title to the LTSCs that are the subject of this Agreement and agrees to convey marketable title to such LTSCs free and clear of all liens, claims, and encumbrances.

#### **ARTICLE 4 TRANSFER DOCUMENTATION**

**4.1 Transfer Form.** To evidence the transfer of the Long Term Storage Credits contemplated by this Agreement, Buyer and Seller shall execute Transfer Forms as specified in Section 5.1.

**4.2 Additional Actions and Documentation.** The parties shall cooperate to take such further actions and execute such further documents as may be determined by either party to be reasonably necessary or advisable in order to complete the transfer of the LTSCs contemplated by this Agreement.

#### **ARTICLE 5 PAYMENT AND DELIVERY**

**5.1 Payment.** Except for the first payment shown as September 1, 2016 in Section 3.5, by August 1 of each year, Buyer shall pay Seller the purchase price due in accordance with Section 3.5 in full by wire transfer or ACH payment using information sent by Seller in accordance with Article 7. Subsequent payments shall be made in the same manner following the schedule in Section 3.5.

**5.2 Delivery.** Concurrently with the receipt of each payment, the Seller shall execute and deliver to Buyer an Arizona Department of Water Resources Long-Term Storage Credit Transfer Form (Transfer Form) transferring the appropriate amount of Phoenix LTSCs to the Buyer's Long-Term Storage Account, and/or Pinal LTSCs to Community's Long-Term Storage Account as specified by the Buyer, according to the schedule in Section 3.5.

5.2.1 With respect to Phoenix LTSCs, upon Buyer's receipt of the Transfer Form, Buyer shall promptly countersign the Transfer Form and file it with ADWR. Buyer shall be solely responsible for filing the Transfer Forms with ADWR and shall pay any applicable filing and transfer fees in connection therewith. Buyer and Seller shall cooperate with ADWR to facilitate completion of such transfer by ADWR.

5.2.2 Seller and Community will facilitate the transfer of Pinal LTSCs from Seller's Long-Term Storage Account to the Community's Long-Term Storage Account. Buyer shall reimburse Community for any applicable filing and transfer fees in connection therewith, provided Community invoices Buyer and such invoices itemize the applicable filing and transfer fees.

**5.3 Right to Repurchase.** In the event Buyer wishes to resell the Phoenix LTSCs purchased from Seller pursuant to this Agreement, Buyer shall provide Seller with written notice. Within fifteen (15) days from receipt of such notice, Seller shall provide Buyer with the Gila River Water Storage LLC Current Price. In the event Buyer wishes to resell the Phoenix LTSCs purchased pursuant to this Agreement for a price less than the Gila River Water Storage LLC Current Price, Buyer shall within thirty (30) days of the receipt of the Gila River Water Storage LLC Current Price, provide Seller with a written offer to sell the Phoenix LTSCs to Seller for the price per acre-foot as referenced in Section 3.5, plus interest calculated at four percent (4%) annually from the date on which the Phoenix LTSCs were assigned from Seller to Buyer to the date on which the Phoenix LTSCs are repurchased by Seller. Seller shall have 30 days from the date of receipt of the offer to elect to purchase the Phoenix LTSCs. If Seller elects to purchase the Phoenix LTSCs, Buyer and Seller shall promptly enter into a purchase agreement with terms substantially similar to this Agreement, provided, however that the delivery of the Phoenix LTSCs from Buyer to Seller shall be completed in a single delivery. If Seller declines to accept the offer or fails to provide notice to Buyer of its election within the 30-day period, Buyer shall be free, for a period of 180 days, to sell the Phoenix LTSCs to a third party. If Buyer fails to sell all of the Phoenix LTSCs purchased pursuant to this Agreement during such 180-day period, the rights of Seller in this Section 5.3 shall be reinstated and Buyer shall not sell the Phoenix LTSCs to a third party for a price less than the Gila River Water Storage LLC Current Price without again offering the Phoenix LTSCs to Seller. Notwithstanding the foregoing, if the Buyer does not sell all of the LTSCs purchased under this Agreement by the tenth anniversary of the Effective Date, the Seller's Right to Repurchase expires on such tenth anniversary without notice or action by either party.

## **ARTICLE 6 REJECTION OF LONG-TERM STORAGE CREDIT TRANSFER OR LEASE AGREEMENT**

**6.1 Phoenix LTSC.** Buyer shall be solely responsible for verifying that it is eligible to receive the Phoenix LTSCs to be purchased pursuant to this Agreement. Buyer acknowledges that it is assuming the risk that Arizona law or ADWR's policies regarding eligibility for purchase of Phoenix LTSCs may change between the date of this Agreement and the filing of the Transfer Form and Buyer assumes all risks of any such change in law or policies. Buyer acknowledges and understands that despite Seller's sale of 25,000 acre-feet of Phoenix LTSCs, ADWR may ultimately credit Buyer's Long-Term Storage Account with less than such amounts. Buyer agrees that Seller shall not be responsible for any determination by ADWR that, despite Seller's transfer of 25,000 acre-feet of Phoenix LTSCs, Buyer's Long-Term Storage Account is ultimately credited with less than such amount and further agrees that in such event Seller shall refund to Buyer, within thirty (30) days of its notification of such circumstance, the purchase price of the Phoenix LTSCs not transferred.

**6.2 Pinal LTSC.** The parties agree that it is the intent of the parties that the Pinal LTSCs become a payment medium under the Lease Agreement for 125,000 acre feet of LTSCs such that the Buyer will direct Seller to transfer each Pinal LTSC to Community and receive in return one acre foot of Community CAP Water. In order to facilitate the Community's use of the Pinal LTSC the Buyer and Community will enter into a Contributed Funds Agreement, attached hereto as Exhibit A, which will be entered into upon receipt of all federal and state approvals necessary to effectuate the Collateral Agreements and the Community's use of Pinal LTSCs. Therefore, if for any reason ADWR does not approve the transfer of all or some of the 125,000 Pinal LTSCs from Seller to Community, Seller will refund, within thirty (30) days of its notification of such circumstance, the purchase price of the Pinal LTSCs not transferred to Community. In addition, if the United States does not approve the Lease Agreement the Seller will refund, within thirty (30) days of its notification of such circumstance, any payment of the Pinal LTSCs made in accordance with Section 3.5.

## **ARTICLE 7 NOTICES**

All notices requests, consents, waivers or other communications required or permitted to be given under this Agreement to a party must be in writing and must be personally delivered to the intended recipient or sent to the intended recipient via (a) facsimile (to the number set forth below), (b) nationally recognized overnight courier, shipping charges paid by sender, addressed as follows, or (c) U.S. mail, postage prepaid, addressed as follows:

**If to Buyer:**

City of Chandler  
Director of Municipal Utilities Department  
Post Office Box 4008, Mailstop 905  
Chandler, Arizona 85244-4008

With a copy to:  
Chandler City Attorney  
Post Office Box 4008, Mailstop 602  
Chandler, Arizona 85244-4008

**If to Seller:**

Gila River Water Storage, LLC  
c/o Salt River Project  
PO Box 52025  
Mail Station PAB232  
Phoenix, AZ 85072-2025  
Attn: David C. Roberts, Associate General Manager, Water Resources

**with a copy to:**

Gila River Indian Community  
P.O. Box 97

Sacaton, Arizona 85147  
Attn: Linus Everling, General Counsel

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

**8.1 Public Announcements.** Neither party may issue or make any public announcement, press release or official public statement regarding this Agreement or the subject matter hereof unless such public announcement, press release or official public statement is issued jointly by the parties or, prior to the release of the public announcement, press release or official public statement, such party furnishes the other party with a copy of such announcement, press release or official public statement, and obtains the approval of the other party, such approval not to be unreasonably withheld, conditioned or delayed. Nothing in this Section 8.1 shall apply to the filing of the Transfer Forms or necessary public meetings or agendas as required by Arizona state law.

**8.2 Confidentiality of Materials Used in Negotiation.** Each party shall retain all information obtained during negotiation of this Agreement in strict confidence and not use it, or disclose it to any third parties, except for any information which (a) is at the time of such disclosure known to the public or thereafter becomes so known, through no violation by such party of this Agreement; (b) such party can demonstrate such information was in its possession prior to disclosure hereunder, or under any prior contracts or negotiations between the parties hereto; or (c) is required by law including, but not limited to, Arizona public records law or other regulatory or judicial authority to be so disclosed. Notwithstanding the foregoing, both party may communicate information to its officers, employees, affiliates, attorneys, consultants, and other representatives to the extent necessary to evaluate the information received, provided its consultants and other third party representatives have a need to know and agree to be bound with respect thereto in the same manner as the disclosing party. The provisions of this Section shall survive termination of this Agreement. The Agreement is not confidential but the parties shall not, except in compliance with Arizona law, disclose it to another person or entity.

**8.3 Choice of Law; Jurisdiction; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to conflicts of law principles. The parties agree that any action, suit or proceeding arising out of or relating to this Agreement shall be initiated and prosecuted in a state or federal court of competent jurisdiction located in Maricopa County, Arizona, and the parties irrevocably submit to the jurisdiction of any such court.

**8.4 Waiver of Jury Trial.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any dispute arising out of or relating to this Agreement.

**8.5 Amendment.** No amendment, modification or change to this Agreement shall be enforceable unless set forth in writing and executed by both parties.

**8.6 Assignability.** Neither party hereto may assign its rights or obligations under this Agreement without the written consent of the other party, which consent will not be unreasonably withheld.

**8.7 Time of the Essence.** Time is of the essence in the performance of this Agreement.

**8.8 Specific Performance.** The parties agree that if a party fails to perform its obligations under this Agreement, other remedies will not be sufficient and the parties agree that, in addition to other available remedies, the remedy of specific performance shall be available to the aggrieved party.

**8.9 Counterparts.** This Agreement may be executed in counterparts, including in facsimile and electronic formats (including portable document format (.pdf)), each of which is an original and all of which constitute one and the same instrument.

**8.10 Entire Agreement.** This Agreement and the Collateral Agreements constitute the entire understanding between the parties with respect to the subject matter hereof and thereof and supersedes any and all prior negotiations, undertakings, understandings, agreements and business term sheets between the parties with respect to the subject matter hereof and thereof. No party will be bound by or deemed to have made in connection herewith any representations, warranties, commitments or undertakings, except those contained herein or therein.

**8.11 Waiver.** No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving party. A waiver by any party of any right or remedy hereunder shall not be construed as a waiver of any other right or remedy, whether pursuant to the same or a different term, condition or covenant.

**8.12 Construction.** The headings in this Agreement are inserted for convenience only, and shall not constitute a part of this Agreement or be used to construe or interpret any of its provisions. The parties have participated jointly in negotiating and drafting this Agreement. If a question of interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. The word “include” or “including” means include or including, without limitation.

**8.13 Rules, Regulations and Amendment or Successor Statutes.** All references in this Agreement to the Arizona Revised Statutes include all rules and regulations promulgated by ADWR under such statutes and all amendment statutes and successor statutes, rules, and regulations to such statutes, rules, and regulations.

**8.14 Severability.** If any provision or clause of this 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 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 Agreement are severable. No provision or clause shall be severed, however, if the severance would deprive any Party of its material

benefits under this Agreement.

**8.15 Attorneys' Fees.** Should any litigation be commenced under this Agreement, the successful party in such litigation shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court or other costs incurred in such litigation or proceeding.

**8.17 Force Majeure.** If either Party is delayed or prevented from the performance of any duty or obligation under this Agreement or the Corollary Agreements by reason of a Force Majeure Event, then the performance of such duty or obligation shall be excused for the period of the delay, and the period for the performance by such Party of any such duty or obligation shall be extended for a period equivalent to the period of such delay. The Party subject to any Force Majeure Event shall provide written notice to the other Party as soon as reasonably practicable.

**8.18 Invalidity of Agreement.** If, as a result of any acts or omissions by a person or entity not a Party to this Agreement, the Buyer's entitlement to LTSCs under this Agreement is determined to be invalid by a final judgment entered over the opposition of the Buyer with the result that the Agreement is deemed null and void, the Seller shall refund any payments it has received from Buyer as consideration for the LTSCs under this or any one of the Collateral Agreements.

**8.19 Failure to Receive Necessary Approvals.** In the event the parties fail to receive any federal or state approvals that are necessary to effectuate this Agreement and any of the Collateral Agreements by June 30, 2019, Buyer and Seller shall meet and confer to decide whether to continue to work towards obtaining the necessary approvals or to terminate the agreement.

8.19.1 In the event the Agreement is terminated pursuant to this Subsection 8.19, Buyer shall transfer to Seller any LTSC it has received from Seller under this agreement.

8.19.2 Once the LTSC transfer described in Subsection 8.19.1 has been completed by ADWR, Seller shall refund the payments it has received from Buyer for the LTSCs transferred in satisfaction of Subsection 8.19.1.

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the date first set forth above.

**Gila River Water Storage, LLC,**  
a Delaware limited liability company

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

Its: \_\_\_\_\_

**City of Chandler**, an Arizona municipal corporation

By: \_\_\_\_\_  
Jay Tibshraeny, Mayor

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

## **Exhibit A**

### **CONTRIBUTED FUNDS AGREEMENT**

**THE GILA RIVER INDIAN COMMUNITY (“COMMUNITY”)  
AND  
THE CITY OF CHANDLER, AN ARIZONA MUNICIPALITY (“CHANDLER”)**

**FOR ASSISTANCE TOWARD COSTS CONCERNING THE COMMUNITY’S RECOVERY  
OF PINAL ACTIVE MANAGEMENT LONG-TERM STORAGE CREDITS AND/OR USE  
OF EXCHANGED RECLAIMED WATER.**

#### **ARTICLE I. BACKGROUND & PURPOSE**

This Contributed Funds Agreement (“Agreement”) sets forth the responsibilities and procedures for coordinating, communicating and assisting the Community in developing infrastructure on its Reservation to facilitate:

- A. The recovery of long-term storage credits that were purchased by Chandler to be used as a payment medium for Leased Water in accordance with the Lease Agreement for CAP Water between City of Chandler and the Gila River Indian Community (“Lease Agreement”); and/or
- B. The use of Chandler reclaimed water under Reclaimed Water Exchange Agreement between the City of Chandler and the Gila River Indian Community (“Exchange”).

The purpose of this Agreement is to provide financial assistance to the Community to build the necessary infrastructure to facilitate the intent of the Lease Agreement and Exchange.

The Community and Chandler acknowledge that this Agreement is part of a broader transaction among the Chandler, Gila River Water Storage, LLC (“GRWS”), and the Community in which the Chandler has leased CAP Water from the Community under the Lease Agreement, exchanged reclaimed water for CAP Water from the Community under the Exchange, and purchased Pinal AMA long-term storage credits from GRWS.

The Community acknowledges that the consideration it has received, or will receive, under this Agreement, the Lease Agreement and Exchange represents fair market value for its CAP water leased to, or exchanged with, Chandler.

#### **ARTICLE II. ROLES AND RESPONSIBILITIES**

Both parties do mutually understand and agree as follows:

Chandler will:

- Fund the costs, limited to the amount stated in the next paragraph, associated with developing infrastructure on the Community’s Reservation to facilitate the Community’s recovery of

long-term storage credits it receives under the Lease Agreement and/or the use of reclaimed water delivered to the Community under the Exchange.

- Wire transfer the sum of one million seven hundred forty thousand dollars (\$1,740,000) into a Community account, no later than July 31, 2019, provided all necessary state and federal approvals have been received.

The Community will:

- Upon receipt of the contribution of funds, be solely responsible for the development of infrastructure on its Reservation.

### **ARTICLE III. ADMINISTRATION**

The Community and Chandler will execute this Agreement upon receiving all federal and state approvals necessary to effectuate the Lease Agreement and Exchange, which include:

- A. Arizona Department of Water Resources approving the transfer of 125,000 Pinal AMA long-term storage credits under the Purchase and Sale Agreement for Long-Term Storage Credits between GRWS and Chandler;
- B. The United States approving the Lease Agreement; and
- C. The United States approving the Exchange.

This Agreement shall become effective when signed by the authorized representatives of the Community and Chandler, and shall remain in effect until the purpose of this Agreement has been completed or until one of the parties terminates the Agreement in writing.

For administrative purposes, the Community agrees that Linus Everling, Community General Counsel, or other such person authorized by Community, shall serve as the point of contact in regard to communications, official correspondence, and other matters related to this Agreement. Chandler Water Resource Manager Gregg Capps will be the point of contact, or other such person authorized by Chandler, shall serve as the point of contact in regard to communications, official correspondence, and other matters related to this Agreement.

Applicable laws of the State of Arizona shall govern this Agreement, including the rights of the Community and Chandler with respect to the performance of this Agreement.

All amendments to this Agreement shall be made in writing by the mutual consent of the parties. The parties jointly agree to share in the responsibilities for amending the Agreement with the frequency and level of detail necessary to support the purposes for which the Agreement has been made. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered in person or sent by mail.

This Agreement will terminate upon completion of its stated purpose, unless formally reaffirmed, revised, or terminated by both the Community and Chandler in writing.

### **ARTICLE V. LIST OF CONTACTS**

For Community:

Linus Everling, General Counsel, Telephone number: 520-562-9763; and Email:  
linus.everling@gric.nsn.us

Address: 525 West Gu u Ki  
Sacaton, AZ 85147

For Chandler:

Gregg Capps, Water Resource Manager, Telephone number: 480-782-3585; and Email:  
Gregg.Capps@chandleraz.gov

Address: Post Office Box 4008, Mailstop 404  
Chandler, Arizona 85244-4008

**ARTICLE VI. AUTHORIZED SIGNATURES**

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by an authorized official on the day and year set forth opposite their signature. This Agreement will become effective upon the date of the final signature.

GILA RIVER INDIAN COMMUNITY:

By: \_\_\_\_\_  
Governor Stephen R. Lewis

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Linus Everling, General Counsel

Date: \_\_\_\_\_

CITY OF CHANDLER:

By: \_\_\_\_\_  
[name]  
[title]

Date: \_\_\_\_\_